

By: Shapiro, et al.

S.B. No. 785

A BILL TO BE ENTITLED

AN ACT

relating to information related to the performance of an abortion;
creating an offense.

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

SECTION 1. This Act may be cited as the Abortion Reporting Requirement Act.

SECTION 2. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE.

(a) The department shall maintain a list of domestic violence shelters and assistance programs and provide a copy of the list to each person that performs or induces an abortion so that the person may refer a woman to a shelter or program if the woman communicates that the woman is being abused or is being forced into having the abortion.

(b) A physician may refer a woman to a domestic violence shelter or assistance program as medically necessary.

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

SUBCHAPTER C. ABORTION REPORTING

Sec. 171.051. ABORTION REPORTING FORM. (a) A physician who performs or induces an abortion must submit a report to the department on each abortion the physician performs or induces. The report must be submitted on a form provided by the department and a

1 copy of this section must be attached to the form.

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

4 (c) The abortion reporting form for each abortion must
5 include space for reporting the following information:

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

12 (2) the signature and license number of the physician
13 who performed or induced the abortion;

14 (3) the patient's age, race, marital status, and
15 municipality, county, and state or, if the person is not a resident
16 of the United States, nation of residence;

17 (4) the type of abortion procedure;

18 (5) the date the abortion was performed or induced;

19 (6) a space for the patient to optionally indicate the
20 specific reason the abortion was performed or induced;

21 (7) whether the patient survived the abortion, and if
22 the patient did not survive, the cause of death;

23 (8) the number of weeks of gestation based on the best
24 medical judgment of the attending physician at the time of the
25 procedure and the weight of the fetus, if determinable;

26 (9) the date, if known, of the patient's last menstrual
27 cycle and the method of pregnancy verification;

1 (10) the number of previous live births of the
2 patient;

3 (11) the number of previous performed or induced
4 abortions of the patient;

5 (12) the number of previous spontaneous abortions of
6 the patient;

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

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

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

12 (16) 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 (17) 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 space for reporting the following
21 information:

22 (1) the age of the father;

23 (2) whether the minor's parent, managing conservator,
24 or guardian provided the written consent required by Section
25 164.052(a)(19), Occupations Code, and if so, whether the consent
26 was given:

27 (A) in person at the time of the abortion; or

1 (B) at a place other than the location at which
2 the abortion is performed or induced;

3 (3) whether the physician concluded that on the basis
4 of the physician's good faith clinical judgment a condition existed
5 that complicated the medical condition of the pregnant minor and
6 necessitated the immediate abortion of her pregnancy to avert her
7 death or to avoid a serious risk of substantial impairment of a
8 major bodily function and that there was insufficient time to
9 obtain the consent of the minor's parent, managing conservator, or
10 legal guardian;

11 (4) whether the minor was emancipated and permitted to
12 have the abortion without the written consent required by Section
13 164.052(a)(19), Occupations Code;

14 (5) whether judicial authorization was received,
15 waiving the written consent required by Section 164.052(a)(19),
16 Occupations Code; and

17 (6) if judicial authorization was received, the
18 process the physician or the physician's agent used to inform the
19 female of the judicial bypass, whether court forms were provided to
20 her, and what entity made the court arrangement for the minor.

21 (e) The patient may fill out sections of the form applicable
22 to the patient's personal information. Sections to be filled out by
23 the patient must be at the top of the form. A patient is not subject
24 to any penalty for failing to fill out any part of the form or
25 filling the form out incorrectly.

26 (f) Each section of the bottom portion of the reporting form
27 must, if known, be completed by the physician performing or

1 inducing the abortion.

2 (g) If the patient indicates that the patient may be being
3 forced to have an abortion in the space provided under Subsection
4 (c)(6), the physician must make all reasonable efforts to ensure
5 that the woman is not being forced to have the abortion, including
6 reporting abuse or neglect under Chapter 261, Family Code, if
7 applicable.

8 (h) A copy of the abortion reporting form must be maintained
9 in the patient's medical file for not less than seven years. The
10 patient must be given a copy of the completed abortion reporting
11 form in person after the physician and patient complete the form.

12 (i) An abortion reporting form for each abortion submitted
13 to the department must include as a cover page a monthly abortion
14 total form. The department must ensure that the number of abortion
15 reporting forms submitted by each physician coincides with the
16 monthly total of performed or induced abortions indicated on the
17 monthly abortion total form.

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

24 (b) A physician practicing in the state who treats an
25 illness or injury related to complications from an abortion shall
26 complete and submit an abortion complication report to the
27 department. The report may be submitted by mail or electronically

1 filed on an Internet website created by the department. The report
2 must include the following information, if known by the physician:

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

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

6 (3) the name of the facility and of the physician who
7 performed or induced the abortion, if known;

8 (4) the license number and signature of the physician
9 who treated the abortion complication;

10 (5) the date on which the abortion complication was
11 diagnosed and treated;

12 (6) a description of the abortion complication;

13 (7) the patient's year of birth, race, marital status,
14 and municipality, county, and state or, if the person is not a
15 resident of the United States, nation of residence;

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

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

21 (10) the number of previous performed or induced
22 abortions for the patient;

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

25 (12) the type of follow-up care recommended and
26 whether the physician who filed the report provided the follow-up
27 care.

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

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

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

9 (d) A copy of the abortion complication reporting form must
10 be maintained in the patient's medical file for not less than seven
11 years. The patient must receive a copy of the form in person before
12 the person leaves the facility.

13 Sec. 171.053. REPORTING REQUIREMENTS. (a) A physician
14 performing or inducing an abortion must complete and submit an
15 abortion reporting form for each abortion as required by Section
16 171.051 not later than the 15th day of each month for abortions
17 performed or induced in the previous calendar month.

18 (b) A physician required to submit an abortion complication
19 report to the department by Section 171.052 must submit the report
20 as soon as practicable after treatment of the abortion
21 complication, but in no case more than seven days after the
22 treatment.

23 (c) Not later than April 1 of each year, the department
24 shall issue in aggregate a public report summarizing the
25 information submitted on each individual report required by
26 Sections 171.051 and 171.052. The public report shall cover the
27 entire previous calendar year and shall be compiled from the data in

1 all the abortion reporting forms and the abortion complication
2 reports submitted to the department in accordance with Sections
3 171.051 and 171.052. Each public report shall also provide
4 information for all previous calendar years, adjusted to reflect
5 any additional information from late or corrected reports. The
6 department shall ensure that none of the information included in
7 the public reports could reasonably lead to identification of any
8 physician who performed or induced an abortion or treated
9 abortion-related complications or of any woman who has had an
10 abortion.

11 (d) Except as provided by Subsection (c) and Section
12 245.023, all information and records held by the department under
13 this subchapter are confidential and are not open records for the
14 purposes of Chapter 552, Government Code. That information may not
15 be released or made public on subpoena or otherwise, except that
16 release may be made:

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

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

21 (3) to medical personnel, appropriate state agencies,
22 or county and district courts to enforce this chapter or Chapter
23 245; or

24 (4) to appropriate state licensing boards to enforce
25 state licensing laws.

26 (e) The department or an employee of the department may not
27 disclose to a person or entity outside of the department the reports

1 or contents of the reports required by this section and Sections
2 171.051 and 171.052 in a manner or fashion that permits the person
3 or entity to whom the report is disclosed to identify in any way the
4 person who is the subject of the report.

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

10 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The
11 department may alter the information required to be reported by
12 this subchapter only in order to update or to clarify the
13 requirements of those sections. The department may not omit
14 information required by this subchapter from forms or reports.

15 Sec. 171.055. PENALTIES. (a) A physician who
16 intentionally or knowingly does not submit a report required by
17 Section 171.051 or 171.052 within 30 days of the date the report was
18 due is subject to a late fee of \$500 for each additional 30-day
19 period or portion of a 30-day period the report is overdue.

20 (b) A physician required to file a report by Section 171.051
21 or 171.052 who has not submitted a complete report before the first
22 anniversary of the date the report was due is subject to a late fee
23 under Subsection (a) and, in an action brought by the department,
24 may be directed by a court to submit a complete report within a
25 period stated by court order or be subject to sanctions for civil
26 contempt.

27 (c) If the department fails to issue the public report

1 required by Section 171.053 or fails in any way to enforce this
2 subchapter, any group of 10 or more citizens of this state may
3 petition a court for an injunction against the executive
4 commissioner of the Health and Human Services Commission requiring
5 that a complete public report be issued within a period stated by
6 court order or that enforcement action be taken. Failure to comply
7 with the injunction subjects the executive commissioner to
8 sanctions for civil contempt.

9 Sec. 171.056. OFFENSE. (a) A person other than the
10 patient commits an offense if a person:

11 (1) fails to submit a form or report required by this
12 subchapter;

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

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

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

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

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

26 (d) An offense under this section is a Class C misdemeanor.

27 SECTION 4. Section 245.001, Health and Safety Code, is

1 amended to read as follows:

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

4 SECTION 5. Subsection (e), Section 245.005, Health and
5 Safety Code, is amended to read as follows:

6 (e) As a condition for renewal of a license, the licensee
7 must submit to the department the annual license renewal fee and an
8 annual report [~~, including the report required under Section~~
9 ~~245.011~~].

10 SECTION 6. Section 248.003, Health and Safety Code, is
11 amended to read as follows:

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

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

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

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

19 (4) an ambulatory surgical center required to be
20 licensed under Chapter 243 (Texas Ambulatory Surgical Center
21 Licensing Act);

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

24 (6) a facility required to be licensed under Chapter
25 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

26 (7) a child care institution, foster group home,
27 foster family home, and child-placing agency, for children in

1 foster care or other residential care who are under the
2 conservatorship of the Department of Protective and Regulatory
3 Services; or

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

6 SECTION 7. Chapter 33, Family Code, is amended by adding
7 Section 33.012 to read as follows:

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

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

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

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

20 (4) the number of judicial bypass cases in which the
21 judge issued an order authorizing an abortion;

22 (5) the number of judicial bypass cases in which the
23 judge denied an order authorizing an abortion; and

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

1 (b) The information collected under this section shall be
2 made available to the public in aggregate form on a statewide basis.

3 (c) Any entity held responsible for the collection and
4 compilation of information collected under this section shall
5 ensure that none of the information included in the public reports
6 could reasonably lead to the identification of any individual
7 female or judge.

8 SECTION 8. Section 245.011, Health and Safety Code, is
9 repealed.

10 SECTION 9. (a) Not later than December 1, 2007:

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

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

17 (b) Not later than January 1, 2008, the Texas Medical Board
18 shall distribute forms as required by Subsection (c), Section
19 171.052, Health and Safety Code, as added by this Act.

20 (c) A physician is not required to submit a report under
21 Section 171.051, Health and Safety Code, as added by this Act,
22 before January 1, 2008.

23 (d) A physician is not required to submit a report under
24 Section 171.052, Health and Safety Code, as added by this Act,
25 before March 1, 2008.

26 (e) The changes in law made by this Act apply only to an
27 offense committed on or after January 1, 2008. For purposes of this

1 section, an offense is committed before January 1, 2008, if any
2 element of the offense occurs before that date. An offense
3 committed before January 1, 2008, is covered by the law in effect
4 when the offense was committed, and the former law is continued in
5 effect for that purpose.

6 SECTION 10. (a) Except as provided by Subsection (b) or
7 (c) of this section, this Act takes effect September 1, 2007.

8 (b) Section 171.056, Health and Safety Code, as added by
9 this Act, takes effect March 1, 2008.

10 (c) Sections 5 and 8 of this Act take effect January 1, 2008.