

By: Shapiro, et al.

S.B. No. 785

Substitute the following for S.B. No. 785:

By: Swinford

C.S.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.

The department shall require that each person that performs or induces an abortion:

(1) maintain a list of domestic violence shelters and assistance programs; and

(2) 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.

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:

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

20 (7) a space for the patient to optionally indicate the  
21 specific reason the abortion was performed or induced, including:

22 (A) the mother is unprepared for the  
23 responsibility 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 health problems;

- 1                   (F) the father of the child opposes the  
2 pregnancy;
- 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 forced to have the abortion;  
9                   (L) the pregnancy was a result of rape; or  
10                   (M) the pregnancy was a result of incest;
- 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 method of pregnancy verification;  
17                  (11) the number of previous live births of the  
18 patient;
- 19                  (12) the number of previous induced abortions of the  
20 patient;
- 21                  (13) the number of previous miscarriages or  
22 spontaneous abortions of the patient;
- 23                  (14) whether the abortion was paid for by:  
24                   (A) private insurance;  
25                   (B) a public health plan; or  
26                   (C) personal payment by patient;  
27                  (15) whether there was no insurance coverage or

1 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;

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 view the printed information required by Subchapter  
17 B, and, if so, whether the woman viewed the information described in  
18 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, managing conservator,  
22 or guardian provided the written consent required by Section  
23 164.052(a)(19), Occupations Code, and, if so, whether the consent  
24 was given:

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

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

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

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

12           (4) whether judicial authorization was received,  
13 waiving the written consent required by Section 164.052(a)(19),  
14 Occupations Code; and

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

19           (e) The patient must fill out sections of the form  
20 applicable to the patient's personal information. Sections to be  
21 filled out by the patient must be at the top of the form. The bottom  
22 portion of the reporting form must be completed by the physician  
23 performing or inducing the abortion. The requirement that the  
24 patient fill out the top portion of the form may be waived only if  
25 the abortion is performed or induced to prevent the death of the  
26 mother or to avoid harm to a mother described by Section  
27 164.052(a)(18), Occupations Code, or harm to a mother who is a minor

1 described by Section 164.052(a)(19), Occupations Code.

2 (f) If the patient indicates that the patient may be being  
3 forced to have an abortion in the space provided under Subsection  
4 (c)(7), 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 (g) 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 Sec. 171.0511. FORM OF REPORT. The abortion reporting form  
13 must be in the following form:

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       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 an abortion shall  
9 complete and submit an abortion complication report to the  
10 department. The report may be submitted by mail or electronically  
11 filed on an Internet website created by the department. The report  
12 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 and type of the facility where the  
17 abortion was performed, if known;

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

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

22               (6) a description of the abortion complication;

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

25               (8) the week of gestation at which the abortion was  
26 performed or induced based on the best medical judgment of the  
27 attending physician at the time of treatment for the abortion



1 complication;

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

3 (10) the number of previous induced abortions for the  
4 patient;

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

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

9 (A) private insurance;

10 (B) a public health plan; or

11 (C) personal payment by the patient;

12 (13) the fee collected for treatment for the abortion  
13 complication;

14 (14) whether there was no insurance coverage or  
15 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 (15) the type of follow-up care recommended.

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

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

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

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

5           Sec. 171.0521. FORM OF COMPLICATION REPORT. The abortion  
6 complication report must be in the following form:

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

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

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

27       (d) Except as provided by Subsection (c) and Section

1 245.023, all information and records held by the department under  
2 this subchapter are confidential and are not open records for the  
3 purposes of Chapter 552, Government Code. That information may not  
4 be released or made public on subpoena or otherwise, except that  
5 release may be made:

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

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

10 (3) to medical personnel, appropriate state agencies,  
11 or county and district courts to enforce this chapter or Chapter  
12 245; or

13 (4) to appropriate state licensing boards to enforce  
14 state licensing laws.

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

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

26 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The  
27 department may alter the information required to be reported by

1 this subchapter only in order to update or to clarify the  
2 requirements of those sections. The department may not omit  
3 information required by this subchapter from forms or reports.

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

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

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

25 Sec. 171.056. OFFENSE. (a) A person commits an offense if  
26 a person:

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

1 subchapter;

2 (2) intentionally, knowingly, or recklessly submits  
3 false information on a form or report required by this subchapter;

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

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

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

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

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

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

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

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

22 (e) As a condition for renewal of a license, the licensee  
23 must submit to the department the annual license renewal fee and an  
24 annual report [~~, including the report required under Section~~  
25 ~~245.011~~].

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

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

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

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

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

8                   (4) an ambulatory surgical center required to be  
9 licensed under Chapter 243 (Texas Ambulatory Surgical Center  
10 Licensing Act);

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

13                   (6) a facility required to be licensed under Chapter  
14 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

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

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

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

24           Sec. 33.012. JUDICIAL BYPASS REPORTING. (a) The supreme  
25 court shall adopt rules governing the collection of statistical  
26 information relating to applications and appeals granted under  
27 Sections 33.003(h) and 33.004(b). Information collected under this



1 section must include the total number of petitions or motions filed  
2 under those sections, and of that number:

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

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

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

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

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

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

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

19 (c) Any entity held responsible for the collection and  
20 compilation of information collected under this section shall  
21 ensure that none of the information included in the public reports  
22 could reasonably lead to the identification of the minor.

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

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

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

1           (2) the Department of State Health Services shall  
2 provide for distribution of the forms required by Subchapter C,  
3 Chapter 171, Health and Safety Code, as added by this Act, along  
4 with instructions for completing the forms.

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

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

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

14           (e) The changes in law made by this Act apply only to an  
15 offense committed on or after January 1, 2008. For purposes of this  
16 section, an offense is committed before January 1, 2008, if any  
17 element of the offense occurs before that date. An offense  
18 committed before January 1, 2008, is covered by the law in effect  
19 when the offense was committed, and the former law is continued in  
20 effect for that purpose.

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

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

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