

By: Shapiro

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 person 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 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 age of the father of the unborn child at the
18 time of the abortion;

19 (5) the type of abortion procedure;

20 (6) the date the abortion was performed or induced;

21 (7) a space for the patient to optionally indicate the
22 specific reason the abortion was performed or induced;

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

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

- 1 (10) the date, if known, of the patient's last
2 menstrual cycle and the method of pregnancy verification;
- 3 (11) the number of previous live births of the
4 patient;
- 5 (12) the number of previous performed or induced
6 abortions of the patient;
- 7 (13) the number of previous spontaneous abortions of
8 the patient;
- 9 (14) whether the abortion was paid for by:
- 10 (A) private insurance;
- 11 (B) a public health plan; or
- 12 (C) personal payment by patient;
- 13 (15) whether insurance coverage was provided by:
- 14 (A) a fee-for-service insurance company;
- 15 (B) a managed care company; or
- 16 (C) another source;
- 17 (16) the fee collected for performing or inducing the
18 abortion;
- 19 (17) the source of referral for the abortion;
- 20 (18) the type of anesthetic, if any, used for each
21 abortion performed;
- 22 (19) the method used to dispose of the fetal tissue and
23 remains;
- 24 (20) complications, if any, for each abortion and for
25 the aftermath of each abortion, with space for description of
26 complications available on the form; and
- 27 (21) whether or not the woman availed herself of the

1 opportunity to obtain a copy of the printed information required by
2 Subchapter B, and if not, whether the woman viewed the information
3 described in Section 171.014, through the Internet or by booklet.

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

6 (1) whether the minor's parent, managing conservator,
7 or guardian provided the written consent required by Section
8 164.052(a)(19), Occupations Code, and if so, whether the consent
9 was given:

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

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

13 (2) whether the physician concluded that on the basis
14 of the physician's good faith clinical judgment a condition existed
15 that complicated the medical condition of the pregnant minor and
16 necessitated the immediate abortion of her pregnancy to avert her
17 death or to avoid a serious risk of substantial impairment of a
18 major bodily function and that there was insufficient time to
19 obtain the consent of the minor's parent, managing conservator, or
20 legal guardian;

21 (3) whether the minor was emancipated and permitted to
22 have the abortion without the written consent required by Section
23 164.052(a)(19), Occupations Code;

24 (4) whether judicial authorization was received,
25 waiving the written consent required by Section 164.052(a)(19),
26 Occupations Code; and

27 (5) if judicial authorization was received, the

1 process the physician or the physician's agent used to inform the
2 female of the judicial bypass, whether court forms were provided to
3 her, and what entity made the court arrangement for the minor.

4 (e) The patient must fill out sections of the form
5 applicable to the patient's personal information. Sections to be
6 filled out by the patient must be at the top of the form. The bottom
7 portion of the reporting form must be completed by the physician
8 performing or inducing the abortion. The requirement that the
9 patient fill out the top portion of the form may be waived only if
10 the abortion is performed or induced to prevent the death of the
11 mother or to avoid harm to a mother described by Section
12 164.052(a)(18), Occupations Code, or harm to a mother who is a minor
13 described by Section 164.052(a)(19), Occupations Code.

14 (f) If the patient indicates that the patient may be being
15 forced to have an abortion in the space provided under Subsection
16 (c)(7), the physician must make all reasonable efforts to ensure
17 that the woman is not being forced to have the abortion, including
18 reporting abuse or neglect under Chapter 261, Family Code, if
19 applicable.

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 in person after the physician and patient complete the 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 an abortion shall
11 complete and submit an abortion complication report to the
12 department. The report may be submitted by mail or electronically
13 filed on an Internet website created by the department. The report
14 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 or induced the abortion, if known;

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

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

24 (6) a description of the abortion complication;

25 (7) the patient's year of birth, race, marital status,
26 and municipality, county, and state or, if the person is not a
27 resident of the United States, nation 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 provided the follow-up
21 care.

22 (c) The Texas Medical Board shall ensure that abortion
23 complication report forms required by this section, together with a
24 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 in person before
6 the person leaves the facility.

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

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

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

1 the public reports could reasonably lead to identification of any
2 physician who performed or induced an abortion or treated
3 abortion-related complications or of any woman who has had an
4 abortion.

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

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

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

15 (3) to medical personnel, appropriate state agencies,
16 or county and district courts to enforce this chapter or Chapter
17 245; or

18 (4) to appropriate state licensing boards to enforce
19 state licensing laws.

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

26 (f) The department may alter the reporting dates
27 established by this section for administrative convenience or

1 fiscal savings or another valid reason provided that physicians
2 performing or inducing abortions submit the forms monthly and the
3 department issues its report once a year.

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

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

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

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

1 with the injunction subjects the executive commissioner to
2 sanctions for civil contempt.

3 Sec. 171.056. OFFENSE. (a) A person commits an offense if
4 a person:

5 (1) fails to submit a form or report required by this
6 subchapter;

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

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

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

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

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

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

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

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

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

27 (e) As a condition for renewal of a license, the licensee

1 must submit to the department the annual license renewal fee and an
2 annual report [~~, including the report required under Section~~
3 ~~245.011~~].

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

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

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

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

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

13 (4) an ambulatory surgical center required to be
14 licensed under Chapter 243 (Texas Ambulatory Surgical Center
15 Licensing Act);

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

18 (6) a facility required to be licensed under Chapter
19 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

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

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

27 SECTION 7. Chapter 33, Family Code, is amended by adding

1 Section 33.012 to read as follows:

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

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

10 (2) the number of judicial bypass cases in which the
11 court appointed counsel;

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

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

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

18 (6) the number of denials described by Subdivision (5)
19 for which an appeal was filed, the number of those appeals that
20 resulted in the denials being affirmed, and the number of those
21 appeals that resulted in reversals of the denials.

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

24 (c) Any entity held responsible for the collection and
25 compilation of information collected under this section shall
26 ensure that none of the information included in the public reports
27 could reasonably lead to the identification of any individual

1 female.

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

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

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

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

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

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

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

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

27 SECTION 10. (a) Except as provided by Subsection (b) or

1 (c) of this section, this Act takes effect September 1, 2007.

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

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