

1-1 By: Shapiro, et al. S.B. No. 785
1-2 (In the Senate - Filed February 21, 2007; March 6, 2007,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 19, 2007, reported adversely, with favorable Committee
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1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 785 By: Williams

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to information related to the performance of an abortion;
1-11 creating an offense.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. This Act may be cited as the Abortion Reporting
1-14 Requirement Act.

1-15 SECTION 2. Subchapter A, Chapter 171, Health and Safety
1-16 Code, is amended by adding Section 171.006 to read as follows:

1-17 Sec. 171.006. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE.

1-18 (a) The department shall maintain a list of domestic violence
1-19 shelters and assistance programs and provide a copy of the list to
1-20 each person that performs or induces an abortion so that the person
1-21 may refer a woman to a shelter or program if the woman communicates
1-22 that the woman is being abused or is being forced into having the
1-23 abortion.

1-24 (b) A physician may refer a woman to a domestic violence
1-25 shelter or assistance program as medically necessary.

1-26 SECTION 3. Chapter 171, Health and Safety Code, is amended
1-27 by adding Subchapter C to read as follows:

1-28 SUBCHAPTER C. ABORTION REPORTING

1-29 Sec. 171.051. ABORTION REPORTING FORM. (a) A physician
1-30 who performs or induces an abortion must submit a report to the
1-31 department on each abortion the physician performs or induces. The
1-32 report must be submitted on a form provided by the department and a
1-33 copy of this section must be attached to the form.

1-34 (b) The report may not identify the name of the patient by
1-35 any means.

1-36 (c) The abortion reporting form for each abortion must
1-37 include space for reporting the following information:

1-38 (1) the name of the abortion facility at which the
1-39 abortion was performed or induced and whether the facility is
1-40 licensed as an abortion facility under Chapter 245, is operating as
1-41 the private office of a licensed physician, or is a licensed
1-42 hospital, hospital satellite clinic, or ambulatory surgical
1-43 center;

1-44 (2) the signature and license number of the physician
1-45 who performed or induced the abortion;

1-46 (3) the patient's age, race, marital status, and
1-47 municipality, county, and state or, if the person is not a resident
1-48 of the United States, nation of residence;

1-49 (4) the type of abortion procedure;

1-50 (5) the date the abortion was performed or induced;

1-51 (6) a space for the patient to optionally indicate the
1-52 specific reason the abortion was performed or induced;

1-53 (7) whether the patient survived the abortion, and if
1-54 the patient did not survive, the cause of death;

1-55 (8) the number of weeks of gestation based on the best
1-56 medical judgment of the attending physician at the time of the
1-57 procedure and the weight of the fetus, if determinable;

1-58 (9) the date, if known, of the patient's last menstrual
1-59 cycle and the method of pregnancy verification;

1-60 (10) the number of previous live births of the
1-61 patient;

1-62 (11) the number of previous performed or induced
1-63 abortions of the patient;

2-1 (12) the number of previous spontaneous abortions of
 2-2 the patient;

2-3 (13) the source of referral for the abortion;

2-4 (14) the type of anesthetic, if any, used for each
 2-5 abortion performed;

2-6 (15) the method used to dispose of the fetal tissue and
 2-7 remains;

2-8 (16) complications, if any, for each abortion and for
 2-9 the aftermath of each abortion, with space for description of
 2-10 complications available on the form; and

2-11 (17) whether or not the woman availed herself of the
 2-12 opportunity to obtain a copy of the printed information required by
 2-13 Subchapter B, and if not, whether the woman viewed the information
 2-14 described in Section 171.014, through the Internet or by booklet.

2-15 (d) If the mother of the unborn child is a minor, the report
 2-16 on each abortion must include space for reporting the following
 2-17 information:

2-18 (1) the age of the father;

2-19 (2) whether the minor's parent, managing conservator,
 2-20 or guardian provided the written consent required by Section
 2-21 164.052(a)(19), Occupations Code, and if so, whether the consent
 2-22 was given:

2-23 (A) in person at the time of the abortion; or

2-24 (B) at a place other than the location at which
 2-25 the abortion is performed or induced;

2-26 (3) whether the physician concluded that on the basis
 2-27 of the physician's good faith clinical judgment a condition existed
 2-28 that complicated the medical condition of the pregnant minor and
 2-29 necessitated the immediate abortion of her pregnancy to avert her
 2-30 death or to avoid a serious risk of substantial impairment of a
 2-31 major bodily function and that there was insufficient time to
 2-32 obtain the consent of the minor's parent, managing conservator, or
 2-33 legal guardian;

2-34 (4) whether the minor was emancipated and permitted to
 2-35 have the abortion without the written consent required by Section
 2-36 164.052(a)(19), Occupations Code;

2-37 (5) whether judicial authorization was received,
 2-38 waiving the written consent required by Section 164.052(a)(19),
 2-39 Occupations Code; and

2-40 (6) if judicial authorization was received, the
 2-41 process the physician or the physician's agent used to inform the
 2-42 female of the judicial bypass, whether court forms were provided to
 2-43 her, and what entity made the court arrangement for the minor.

2-44 (e) The patient may fill out sections of the form applicable
 2-45 to the patient's personal information. Sections to be filled out by
 2-46 the patient must be at the top of the form. A patient is not subject
 2-47 to any penalty for failing to fill out any part of the form or
 2-48 filling the form out incorrectly.

2-49 (f) Each section of the bottom portion of the reporting form
 2-50 must, if known, be completed by the physician performing or
 2-51 inducing the abortion.

2-52 (g) If the patient indicates that the patient may be being
 2-53 forced to have an abortion in the space provided under Subsection
 2-54 (c)(6), the physician must make all reasonable efforts to ensure
 2-55 that the woman is not being forced to have the abortion, including
 2-56 reporting abuse or neglect under Chapter 261, Family Code, if
 2-57 applicable.

2-58 (h) A copy of the abortion reporting form must be maintained
 2-59 in the patient's medical file for not less than seven years. The
 2-60 patient must be given a copy of the completed abortion reporting
 2-61 form in person after the physician and patient complete the form.

2-62 (i) An abortion reporting form for each abortion submitted
 2-63 to the department must include as a cover page a monthly abortion
 2-64 total form. The department must ensure that the number of abortion
 2-65 reporting forms submitted by each physician coincides with the
 2-66 monthly total of performed or induced abortions indicated on the
 2-67 monthly abortion total form.

2-68 Sec. 171.052. ABORTION COMPLICATION REPORT. (a) The
 2-69 department shall prepare an abortion complication report form for

3-1 all physicians licensed and practicing in this state. A copy of
 3-2 this section must be attached to the form. The department shall
 3-3 create an Internet website at which the report may be filed
 3-4 electronically.

3-5 (b) A physician practicing in the state who treats an
 3-6 illness or injury related to complications from an abortion shall
 3-7 complete and submit an abortion complication report to the
 3-8 department. The report may be submitted by mail or electronically
 3-9 filed on an Internet website created by the department. The report
 3-10 must include the following information, if known by the physician:

3-11 (1) the date and type of the original abortion;

3-12 (2) the name and type of facility where the abortion
 3-13 complication was diagnosed and treated;

3-14 (3) the name of the facility and of the physician who
 3-15 performed or induced the abortion, if known;

3-16 (4) the license number and signature of the physician
 3-17 who treated the abortion complication;

3-18 (5) the date on which the abortion complication was
 3-19 diagnosed and treated;

3-20 (6) a description of the abortion complication;

3-21 (7) the patient's year of birth, race, marital status,
 3-22 and municipality, county, and state or, if the person is not a
 3-23 resident of the United States, nation of residence;

3-24 (8) the week of gestation at which the abortion was
 3-25 performed or induced based on the best medical judgment of the
 3-26 attending physician at the time of treatment for the abortion
 3-27 complication;

3-28 (9) the number of previous live births by the patient;

3-29 (10) the number of previous performed or induced
 3-30 abortions for the patient;

3-31 (11) the number of previous spontaneous abortions by
 3-32 the patient; and

3-33 (12) the type of follow-up care recommended and
 3-34 whether the physician who filed the report provided the follow-up
 3-35 care.

3-36 (c) The Texas Medical Board shall ensure that abortion
 3-37 complication report forms required by this section, together with a
 3-38 copy of this section, are provided:

3-39 (1) to a physician who becomes newly licensed to
 3-40 practice in this state, at the same time as official notification to
 3-41 that physician that the physician is licensed; and

3-42 (2) not later than December 1 of each year to all
 3-43 physicians licensed to practice in this state.

3-44 (d) A copy of the abortion complication reporting form must
 3-45 be maintained in the patient's medical file for not less than seven
 3-46 years. The patient must receive a copy of the form in person before
 3-47 the person leaves the facility.

3-48 Sec. 171.053. REPORTING REQUIREMENTS. (a) A physician
 3-49 performing or inducing an abortion must complete and submit an
 3-50 abortion reporting form for each abortion as required by Section
 3-51 171.051 not later than the 15th day of each month for abortions
 3-52 performed or induced in the previous calendar month.

3-53 (b) A physician required to submit an abortion complication
 3-54 report to the department by Section 171.052 must submit the report
 3-55 as soon as practicable after treatment of the abortion
 3-56 complication, but in no case more than seven days after the
 3-57 treatment.

3-58 (c) Not later than April 1 of each year, the department
 3-59 shall issue in aggregate a public report summarizing the
 3-60 information submitted on each individual report required by
 3-61 Sections 171.051 and 171.052. The public report shall cover the
 3-62 entire previous calendar year and shall be compiled from the data in
 3-63 all the abortion reporting forms and the abortion complication
 3-64 reports submitted to the department in accordance with Sections
 3-65 171.051 and 171.052. Each public report shall also provide
 3-66 information for all previous calendar years, adjusted to reflect
 3-67 any additional information from late or corrected reports. The
 3-68 department shall ensure that none of the information included in
 3-69 the public reports could reasonably lead to identification of any

4-1 physician who performed or induced an abortion or treated
 4-2 abortion-related complications or of any woman who has had an
 4-3 abortion.

4-4 (d) Except as provided by Subsection (c) and Section
 4-5 245.023, all information and records held by the department under
 4-6 this subchapter are confidential and are not open records for the
 4-7 purposes of Chapter 552, Government Code. That information may not
 4-8 be released or made public on subpoena or otherwise, except that
 4-9 release may be made:

4-10 (1) for statistical purposes, but only if a person,
 4-11 patient, physician, or facility is not identified;

4-12 (2) with the consent of each person, patient,
 4-13 physician, and facility identified in the information released;

4-14 (3) to medical personnel, appropriate state agencies,
 4-15 or county and district courts to enforce this chapter or Chapter
 4-16 245; or

4-17 (4) to appropriate state licensing boards to enforce
 4-18 state licensing laws.

4-19 (e) The department or an employee of the department may not
 4-20 disclose to a person or entity outside of the department the reports
 4-21 or contents of the reports required by this section and Sections
 4-22 171.051 and 171.052 in a manner or fashion that permits the person
 4-23 or entity to whom the report is disclosed to identify in any way the
 4-24 person who is the subject of the report.

4-25 (f) The department may alter the reporting dates
 4-26 established by this section for administrative convenience or
 4-27 fiscal savings or another valid reason provided that physicians
 4-28 performing or inducing abortions submit the forms monthly and the
 4-29 department issues its report once a year.

4-30 Sec. 171.054. MODIFICATION OF FORM CONTENTS. The
 4-31 department may alter the information required to be reported by
 4-32 this subchapter only in order to update or to clarify the
 4-33 requirements of those sections. The department may not omit
 4-34 information required by this subchapter from forms or reports.

4-35 Sec. 171.055. PENALTIES. (a) A physician who
 4-36 intentionally or knowingly does not submit a report required by
 4-37 Section 171.051 or 171.052 within 30 days of the date the report was
 4-38 due is subject to a late fee of \$500 for each additional 30-day
 4-39 period or portion of a 30-day period the report is overdue.

4-40 (b) A physician required to file a report by Section 171.051
 4-41 or 171.052 who has not submitted a complete report before the first
 4-42 anniversary of the date the report was due is subject to a late fee
 4-43 under Subsection (a) and, in an action brought by the department,
 4-44 may be directed by a court to submit a complete report within a
 4-45 period stated by court order or be subject to sanctions for civil
 4-46 contempt.

4-47 (c) If the department fails to issue the public report
 4-48 required by Section 171.053 or fails in any way to enforce this
 4-49 subchapter, any group of 10 or more citizens of this state may
 4-50 petition a court for an injunction against the executive
 4-51 commissioner of the Health and Human Services Commission requiring
 4-52 that a complete public report be issued within a period stated by
 4-53 court order or that enforcement action be taken. Failure to comply
 4-54 with the injunction subjects the executive commissioner to
 4-55 sanctions for civil contempt.

4-56 Sec. 171.056. OFFENSE. (a) A person other than the
 4-57 patient commits an offense if a person:

4-58 (1) fails to submit a form or report required by this
 4-59 subchapter;

4-60 (2) submits false information on a form or report
 4-61 required by this subchapter;

4-62 (3) includes the name or identifying information of
 4-63 the woman who had the abortion in a form or report required by this
 4-64 subchapter; or

4-65 (4) includes the name or identifying information of a
 4-66 physician in a public report required by Section 171.053(c).

4-67 (b) A person who discloses confidential identifying
 4-68 information in violation of Section 171.053(e) commits an offense.

4-69 (c) A physician commits an offense if the physician performs

5-1 or induces an abortion without making a reasonable effort to ensure
5-2 that the abortion is not the result of coercion, as defined by
5-3 Section 1.07, Penal Code.

5-4 (d) An offense under this section is a Class C misdemeanor.

5-5 SECTION 4. Section 245.001, Health and Safety Code, is
5-6 amended to read as follows:

5-7 Sec. 245.001. SHORT TITLE. This chapter may be cited as the
5-8 Texas Abortion Facility [~~Reporting and~~] Licensing Act.

5-9 SECTION 5. Subsection (e), Section 245.005, Health and
5-10 Safety Code, is amended to read as follows:

5-11 (e) As a condition for renewal of a license, the licensee
5-12 must submit to the department the annual license renewal fee and an
5-13 annual report [~~, including the report required under Section~~
5-14 ~~245.011~~].

5-15 SECTION 6. Section 248.003, Health and Safety Code, is
5-16 amended to read as follows:

5-17 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

5-18 (1) a home and community support services agency
5-19 required to be licensed under Chapter 142;

5-20 (2) a person required to be licensed under Chapter 241
5-21 (Texas Hospital Licensing Law);

5-22 (3) an institution required to be licensed under
5-23 Chapter 242;

5-24 (4) an ambulatory surgical center required to be
5-25 licensed under Chapter 243 (Texas Ambulatory Surgical Center
5-26 Licensing Act);

5-27 (5) a birthing center required to be licensed under
5-28 Chapter 244 (Texas Birthing Center Licensing Act);

5-29 (6) a facility required to be licensed under Chapter
5-30 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

5-31 (7) a child care institution, foster group home,
5-32 foster family home, and child-placing agency, for children in
5-33 foster care or other residential care who are under the
5-34 conservatorship of the Department of Protective and Regulatory
5-35 Services; or

5-36 (8) a person providing medical or nursing care or
5-37 services under a license or permit issued under other state law.

5-38 SECTION 7. Chapter 33, Family Code, is amended by adding
5-39 Section 33.012 to read as follows:

5-40 Sec. 33.012. JUDICIAL BYPASS REPORTING. (a) The supreme
5-41 court shall adopt rules governing the collection of statistical
5-42 information relating to applications and appeals granted under
5-43 Sections 33.003(h) and 33.004(b). Information collected under this
5-44 section must include the total number of petitions or motions filed
5-45 under those sections, and of that number:

5-46 (1) the number of judicial bypass cases in which the
5-47 court appointed a guardian ad litem;

5-48 (2) the number of judicial bypass cases in which the
5-49 court appointed counsel;

5-50 (3) whether or not the court-appointed guardian ad
5-51 litem and counsel were the same person;

5-52 (4) the number of judicial bypass cases in which the
5-53 judge issued an order authorizing an abortion;

5-54 (5) the number of judicial bypass cases in which the
5-55 judge denied an order authorizing an abortion; and

5-56 (6) the number of denials described by Subdivision (5)
5-57 for which an appeal was filed, the number of those appeals that
5-58 resulted in the denials being affirmed, and the number of those
5-59 appeals that resulted in reversals of the denials.

5-60 (b) The information collected under this section shall be
5-61 made available to the public in aggregate form by county.

5-62 (c) Any entity held responsible for the collection and
5-63 compilation of information collected under this section shall
5-64 ensure that none of the information included in the public reports
5-65 could reasonably lead to the identification of any individual
5-66 female or judge.

5-67 SECTION 8. Section 245.011, Health and Safety Code, is
5-68 repealed.

5-69 SECTION 9. (a) Not later than December 1, 2007:

6-1 (1) the Supreme Court of Texas shall adopt rules as
6-2 required by Section 33.012, Family Code, as added by this Act; and

6-3 (2) the Department of State Health Services shall
6-4 provide for distribution of the forms required by Sections 171.051
6-5 and 171.052, Health and Safety Code, as added by this Act, along
6-6 with instructions for completing the forms.

6-7 (b) Not later than January 1, 2008, the Texas Medical Board
6-8 shall distribute forms as required by Subsection (c), Section
6-9 171.052, Health and Safety Code, as added by this Act.

6-10 (c) A physician is not required to submit a report under
6-11 Section 171.051, Health and Safety Code, as added by this Act,
6-12 before January 1, 2008.

6-13 (d) A physician is not required to submit a report under
6-14 Section 171.052, Health and Safety Code, as added by this Act,
6-15 before March 1, 2008.

6-16 (e) The changes in law made by this Act apply only to an
6-17 offense committed on or after January 1, 2008. For purposes of this
6-18 section, an offense is committed before January 1, 2008, if any
6-19 element of the offense occurs before that date. An offense
6-20 committed before January 1, 2008, is covered by the law in effect
6-21 when the offense was committed, and the former law is continued in
6-22 effect for that purpose.

6-23 SECTION 10. (a) Except as provided by Subsection (b) or
6-24 (c) of this section, this Act takes effect September 1, 2007.

6-25 (b) Section 171.056, Health and Safety Code, as added by
6-26 this Act, takes effect March 1, 2008.

6-27 (c) Sections 5 and 8 of this Act take effect January 1, 2008.

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