

## **BILL ANALYSIS**

C.S.H.B. 3796  
By: Morrison  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Accurate and complete reporting of abortion statistics in Texas should be made to the Department of State Health Services (DSHS). Currently, the state requires minimal information on abortion procedures to be reported, and there is little penalty or enforcement if the information is not submitted or is submitted but knowingly falsified. Although DSHS currently collects some abortion information, that information should be expanded to include a reason for the abortion, certain demographic data, as well as any abortion complications, as there is little non-anecdotal evidence to review in policymaking. Such information will be especially helpful in assessing the needs for outreach programs for pregnant women. Further, there is no current statute requiring DSHS to collect such information and report it in aggregate form, and there is no direct accountability for the provider to collect and submit such data. Enforcement penalties must be enhanced to ensure that the most complete set of data is collected.

C.S.H.B. 3796 provides for detailed reporting forms to be completed by the patient seeking an abortion and the physician performing the abortion, requires DSHS to produce a publicly available report of the aggregate data compiled from each submitted report, and sets forth enforcement penalties.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3796 amends the Health and Safety Code to establish specified prerequisites for an abortion, including completion of three forms prescribed by the bill: a coerced abortion form, an abortion reporting form, and an abortion complication report form. The bill requires the Department of State Health Services (DSHS) to provide each form, and a copy of the bill's provisions relating to the form, to a physician who becomes newly licensed to practice in Texas, not later than the 30th day after the date the physician receives the license, and to all physicians licensed to practice in Texas, not later than December 1 of each year. The bill requires DSHS to provide to such physicians, by the same deadline, copies of the bill's provisions relating to prevention of a coerced abortion, relating to the contents of the coerced abortion form, and relating to domestic violence assistance.

C.S.H.B. 3796 requires DSHS to require each physician who performs an abortion to maintain a list of domestic violence shelters and assistance programs that do not provide or refer for abortions, and to provide a referral to such a domestic violence shelter or assistance program if the woman seeking an abortion communicates to the facility, the physician, or an agent of the physician who is performing the abortion that the woman is being abused or is being coerced to have the abortion.

C.S.H.B. 3796 requires a physician, before performing an abortion, to verbally inform the

woman on whom the abortion is to be performed that a person cannot coerce or force her to have an abortion and that the physician cannot perform the abortion unless the woman provides her voluntary and informed consent. The bill requires the physician to provide the woman on whom the abortion is to be performed with the coerced abortion form in both English and Spanish, and in a language other than English or Spanish, if applicable. The bill prohibits a doctor from performing an abortion on a woman unless, before the abortion, the woman certifies on the prescribed coerced abortion form that she received the required information and materials.

C.S.H.B. 3796 requires a physician, if the woman indicates on the coerced abortion form or the abortion reporting form that she is being coerced to have an abortion performed, to report abuse or neglect under applicable provisions of the Family Code, to provide the required referral to a domestic violence shelter or assistance program, and to provide the woman with access to a telephone in a private room. The bill prohibits a physician in such a case from performing the abortion until the woman provides voluntary and informed consent that the woman states is not the result of coercion.

C.S.H.B. 3796 requires DSHS to develop a coerced abortion form to be completed by each woman on whom an abortion is performed in Texas. The bill prescribes the required form and content of the coerced abortion form and requires DSHS to provide the form in both English and Spanish. The bill requires DSHS, if it determines that a substantial number of residents in this state speak a primary language other than English or Spanish, to provide the required form in that language.

C.S.H.B. 3796 requires a copy of the coerced abortion form certified by the woman to be placed in the woman's medical file and kept until at least the seventh anniversary of the date on which the form was signed or, if the woman is a minor, at least until the date the woman reaches 20 years of age, whichever is later. The bill requires the woman on whom the abortion is performed to be given a copy of the completed coerced abortion form in person before the woman leaves the facility where the abortion is performed.

C.S.H.B. 3796 requires a physician who performs an abortion to submit by mail to DSHS, on a form provided by DSHS, a report on each abortion the physician performs. The bill requires the abortion reporting form to include certain prescribed information to be completed by the patient, but prohibits the report from identifying the name of the patient by any means. The bill requires the abortion reporting form for each abortion to include certain prescribed information to be completed by the physician and requires the report on each abortion, if the patient is a minor, to include certain other prescribed information.

C.S.H.B. 3796 requires the sections to be filled out by the patient to be at the top of the reporting form. The bill requires the bottom portion of the reporting form to be completed by the physician performing the abortion. The bill allows the requirement for the patient to fill out the patient's portion of the form to be waived only if the abortion is performed to prevent the death of the mother or to avoid harm to the mother. The bill requires the physician performing the abortion, if waiver occurs, to include in the patient's medical records a signed written statement certifying the nature of the medical emergency. The bill requires a copy of the abortion reporting form to be maintained in the patient's medical file at least until the seventh anniversary of the date of the abortion. The bill requires the patient to be given a copy of the completed abortion reporting form in person after the physician and patient complete the form.

C.S.H.B. 3796 requires a physician practicing in Texas who treats an illness or injury related to complications from an abortion to complete and submit by mail to DSHS, on a form provided by DSHS, an abortion complication report. The bill prescribes the information required to be included on the form. The bill requires a copy of the abortion complication report form to be maintained in the patient's medical file until the seventh anniversary of the date the abortion complication was diagnosed and treated. The bill requires the patient to receive a copy of the completed form in person before the patient leaves the facility.

C.S.H.B. 3796 requires a physician performing an abortion to complete and submit an abortion reporting form to DSHS for each abortion not later than the 15th day of each month for abortions performed in the previous calendar month. The bill requires a physician who is required to submit an abortion complication report to submit the report as soon as practicable after diagnosis or treatment of the abortion complication, but in no case more than seven days after the date of the diagnosis or treatment.

C.S.H.B. 3796 requires DSHS, not later than April 1 of each year, to issue in aggregate a public report summarizing the information submitted on each individual abortion report and abortion complication report. The bill requires the public report to cover the entire previous calendar year and to be compiled from the data in all such forms and reports submitted to DSHS. The bill requires each public report to also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. The bill requires DSHS to ensure that none of the information included in the public reports could reasonably lead to identification of any physician who performed an abortion or who treated abortion-related complications or of any woman who has had an abortion.

C.S.H.B. 3796 specifies that, except as otherwise provided, all information and records held by DSHS under the bill's provisions relating to abortion reporting, associated reporting requirements, and associated offenses and penalties are confidential and are not open records for the purposes of the open records law. The bill prohibits such information from being released or made public, except under specified conditions for specified purposes. The bill prohibits DSHS or a DSHS employee from disclosing to a person or entity outside of DSHS the abortion report or abortion complication report, or the contents of those reports, in a manner or fashion that permits the person or entity to whom the form or report is disclosed to identify in any way a person who is the subject of a report.

C.S.H.B. 3796 provides that a physician who does not submit an abortion report or an abortion complication report as required 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 thereof that the report is overdue. The bill specifies that a physician who has not submitted a complete report before the first anniversary of the date the report was due is subject to the \$500 late fee and, in an action brought by DSHS, may be directed by a court to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

C.S.H.B. 3796, in provisions that take effect January 1, 2010, specifies that a physician commits a Class A misdemeanor offense if a physician fails to submit a required report; intentionally, knowingly, or recklessly submits false information on a required report; includes the name or identifying information of the woman who had the abortion in a required report; or includes the name or identifying information of a physician in a required public report. The bill makes it a Class A misdemeanor offense for a physician to disclose confidential identifying information in violation of the bill's provisions or for a physician to perform an abortion if the physician reasonably believes that the abortion is the result of coercion.

C.S.H.B. 3796 requires DSHS, not later than December 1, 2009, to develop and make available the required forms along with instructions for completing the forms. The bill requires DSHS, not later than January 1, 2010, to distribute forms as required. The bill specifies that a physician is not required to submit such a form or report before January 1, 2010.

C.S.H.B. 3796, in provisions affecting other portions of the Health and Safety Code, changes the title of the Texas Abortion Facility Reporting and Licensing Act to the Texas Abortion Facility Licensing Act. The bill, effective January 1, 2010, repeals Section 245.011, Health and Safety Code, relating to abortion facility reporting requirements and criminal penalties, and makes conforming changes that take effect on that same date.

## **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2009.

## **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3796 differs from the original by making the requirement that a physician provide a woman on whom an abortion is to be performed with access to a telephone in a private room applicable only if the woman indicates on a coerced abortion form or on an abortion reporting form that she is being coerced to have an abortion performed. The substitute omits a provision included in the original requiring the coerced abortion form to include, in 14-point font or larger followed by spaces for the woman to initial, the statement, "I understand that I will be given access to a telephone in a private room."

C.S.H.B. 3796 adds provisions not in the original requiring the Department of State Health Services (DSHS) to provide to all physicians licensed to practice in Texas, and to a physician who becomes newly licensed to practice in Texas, a copy of the bill's provisions relating to prevention of a coerced abortion, relating to the contents of the coerced abortion form, and relating to referral to domestic violence assistance.

C.S.H.B. 3796 omits provisions included in the original requiring a physician who performs an abortion to submit a coerced abortion form, completed by the woman on whom the abortion is performed, to DSHS for each abortion the physician performs, and requiring the original form to be submitted by mail. The substitute omits a provision included in the original requiring a physician performing an abortion to submit a certified coerced abortion form for each abortion to DSHS not later than the 15th day of each month for abortions performed in the previous calendar month. The substitute differs from the original by making conforming changes to remove provisions establishing penalties and an offense for failure to submit such a form and to remove a provision relating to the department's nondisclosure of such a form or its contents.

C.S.H.B. 3796 adds a provision not in the original including in an abortion reporting form, as information to be completed by a physician, a statement that the physician, in compliance with the bill's provisions relating to prevention of a coerced abortion, screened a patient for coercion.

C.S.H.B. 3796 omits a provision included in the original specifying that certain information and records held by DSHS under the law relating to voluntary and informed consent are confidential and are not open records for the purposes of the open records law. The substitute omits a provision included in the original authorizing the release of that information with the consent of each person, patient, physician, and facility identified in the released information.

C.S.H.B. 3796 omits provisions included in the original making a physician who does not file an abortion coercion form subject to penalties.

C.S.H.B. 3796 differs from the original by specifying that the bill's provisions relating to a Class A misdemeanor apply to a physician.

C.S.H.B. 3796 omits provisions included in the original providing that a person commits an offense if the person fails to submit an abortion reporting form or if the person intentionally, knowingly, or recklessly submits false information on an abortion reporting form.

C.S.H.B. 3796 omits a provision included in the original providing that a person commits an offense if the person includes, in an abortion reporting form or an abortion complication report form, the name or identifying information of the woman who had the abortion.

C.S.H.B. 3796 differs from the original by requiring DSHS, not later than December 1, 2009, to develop and make available, rather than to provide for distribution of, required forms along with

instructions for completing the forms.

C.S.H.B. 3796 makes other conforming and technical changes.