

BILL ANALYSIS

Senate Research Center
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S.B. 2571
By: Shapiro
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to ensure accurate and complete reporting of abortion statistics in Texas to the Department of State Health Services (DSHS). Currently, in regard to abortion, the state requires minimal basic information to be reported, and there is little enforcement or penalty if the information is not submitted or is submitted with knowing falsehood. Although DSHS currently requests some information, this bill expands that information to include a reason for the abortion, other demographic data points, as well as abortion complications. This type of information will be especially helpful in assessing the needs for outreach programs for pregnant women. Furthermore, no current statute requires DSHS to collect this information and report it in aggregate form, and there is no direct accountability for the provider to collect and submit this data. This bill includes enforcement penalties (Class A misdemeanor) in order to ensure that the most complete set of data is collected.

As proposed, S.B. 2571 relates to informed and voluntary consent for an abortion and the collection and reporting of information related to the performance of an abortion and provides penalties.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Subchapter B, Chapter 171, Health and Safety Code, as follows:

SUBCHAPTER B. VOLUNTARY AND INFORMED CONSENT

SECTION 2. Amends Section 171.018, Health and Safety Code, to provide that a physician who intentionally performs an abortion on a woman in violation of Section 171.011 (Informed Consent Required), rather than this subchapter, commits an offense.

SECTION 3. Amends Subchapter B, Chapter 171, Health and Safety Code, by adding Sections 171.019, 171.020, 171.021, and 171.022, as follows:

Sec. 171.019. PREVENTION OF COERCED ABORTIONS. (a) Requires a physician, before performing an abortion, to:

(1) 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;

(2) provide the woman on whom the abortion is to be performed with the coerced abortion form described by Section 171.021 in both English and

Spanish, and in a language other than English or Spanish if applicable, under Section 171.021(c); and

(3) provide the woman with access to a telephone in a private room.

(b) Prohibits a doctor from performing an abortion on a woman unless before the abortion, the woman certifies on the coerced abortion form described by Section 171.021 that she received from the physician the information and materials required by Subsection (a).

(c) Provides that if the woman indicates on the coerced abortion form or on the abortion reporting form required by Section 171.051 that she is being coerced to have an abortion performed, the physician is required to report abuse or neglect under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, if applicable; is required to provide the referral required by Section 171.020(2); and is prohibited from performing the abortion until the woman provides her voluntary and informed consent that the woman states is not a result of coercion.

Sec. 171.020. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE. Requires the Texas Department of Health (TDH) to require each physician who performs an abortion to:

(1) maintain a list of domestic violence shelters and assistance programs that do not provide or refer for abortions; and

(2) provide a referral to a domestic violence shelter or assistance program that does not provide or refer for abortions 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.

Sec. 171.021. CONTENTS OF FORM. (a) Requires TDH to develop a coerced abortion form to be completed by each woman on whom an abortion is performed in the state. Sets forth certain required language for the form.

(b) Requires TDH to provide the form required by Subsection (a) in both English and Spanish.

(c) Requires TDH, if TDH determines that a substantial number of residents in this state speak a primary language other than English or Spanish, to provide the form required by Subsection (a) in that language. Requires TDH to instruct a facility that provides abortions to provide the coerced abortion form in a language other than English or Spanish if TDH determines that a substantial number of residents in the area speak a primary language other than English or Spanish.

Sec. 171.022. PROVISION, SUBMISSION, AND RETENTION OF COERCED ABORTION FORM. (a) Requires TDH to provide a copy of this section and the coerced abortion form required by Section 171.019 to a physician who becomes newly licensed to practice in this state, not later than the 30th day after the date the physician receives the license; and all physicians licensed to practice in this state, not later than December 1 of each year.

(b) Requires a physician who performs an abortion to submit a coerced abortion form, completed by the woman on whom the abortion is performed, to TDH for each abortion the physician performs.

(c) Requires that the original coerced abortion form be submitted by mail.

(d) Requires that a copy of the coerced abortion form certified by the woman 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.

(e) Requires the woman on whom an 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.

SECTION 4. Amends Chapter 171, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ABORTION REPORTING

Sec. 171.051. ABORTION REPORTING FORM. (a) Requires a physician who performs an abortion to submit a report by mail to TDH on each abortion the physician performs. Requires that the report be submitted on a form provided by TDH.

(b) Prohibits the report from identifying the name of the patient by any means.

(c) Requires that the abortion reporting form for each abortion include the certain information to be completed by the patient.

(d) Requires the abortion reporting form for each abortion to include certain information to be completed by the physician.

(e) Sets forth certain required information for the report on each abortion if the patient is a minor.

(f) Requires the patient to fill out sections of the form under Subsection (c). Requires that sections to be filled out by the patient be at the top of the form. Requires that the bottom portion of the reporting form be completed by the physician performing the abortion. Authorizes that the requirement that the patient fill out the patient's portion of the form be waived only if the abortion is performed to prevent the death of the mother or to avoid harm to a mother described by Section 164.052(a)(18) (relating to a prohibited practice if a person performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy except under certain conditions), Occupations Code, or harm to a mother who is a minor described by Section 164.052(a)(19) (relating to a prohibited practice if a person performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, except under certain conditions), Occupations Code. Requires the physician performing the abortion, if the requirement that the patient fill out the patient's portion of the form is waived under this section, to include in the patient's medical records a signed written statement certifying the nature of the medical emergency.

(g) Requires that a copy of the abortion reporting form be maintained in the patient's medical file at least until the seventh anniversary of the date of the abortion. Requires that the patient be given a copy of the completed abortion reporting form in person after the physician and patient complete the form.

(h) Requires TDH to provide the abortion reporting form required by this section, together with a copy of this section to a physician who becomes newly licensed to practice in this state, not later than the 30th day after the date the physician receives the license and all physicians licensed to practice in this state, not later than December 1 of each year.

Sec. 171.052. ABORTION COMPLICATION REPORT. (a) Requires a physician practicing in the state who treats an illness or injury related to complications from an abortion to complete and submit an abortion complication report to TDH. Requires that the report be submitted by mail on the form provided by TDH.

(b) Requires TDH to prepare an abortion complication report form for all physicians licensed and practicing in this state. Requires that a copy of this section be attached to the form. Requires that the form include the date and type of the original abortion, including certain information about the abortion; the name and type of facility where the abortion complication was diagnosed and treated including certain facilities; the name and type of facility where the abortion was performed, if known; the license number, area of specialty, and signature of the physician who treated the abortion complication; the date on which the abortion complication was diagnosed and treated; a description of the abortion complication, including specific complications; the patient's age, race, or ethnicity, and marital status and municipality, county, state, and national of residence; the number of weeks of gestation at which the abortion was performed based on the best medical judgment of the attending physician at the time of treatment for the abortion complication; the number of previously live births of the patient; the number of previous induced abortions for the patient; the number of previous miscarriages or spontaneous abortions of the patient; whether treatment for the abortion complication was paid for by certain methods; the total fee collected for treatment for the abortion complication; whether there was no insurance coverage or insurance coverage was provided by a certain source; and the type of follow-up care recommended.

(c) Requires TDH to provide the abortion complication form required by this section, together with a copy of this section, to a physician who becomes newly licensed to practice in this state, not later than the 30th day after the date the physician receives the license; and all physicians licensed to practice in this state, not later than December 1 of each year.

(d) 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. Requires the patient to receive a copy of the completed form in person before the patient leaves the facility.

SECTION 5. Amends Chapter 171, Health and Safety Code, by adding Subchapter D, as follows:

SUBCHAPTER D. PROVISIONS RELATING TO REPORTS; PENALTIES

Sec. 171.061. REPORTING REQUIREMENTS. (a) Requires a physician performing an abortion to complete and submit an abortion reporting form to TDH for each abortion as required by Section 171.051 not later than the 15th day of each month for abortions performed in the previous calendar month.

(b) Requires a physician required to submit an abortion complication report to TDH by Section 171.052 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) Requires a physician performing an abortion to submit a certified coerced abortion form for each abortion to TDH as required by Section 171.022 not later than the 15th day after each month for abortions performed in the previous calendar month.

(d) Requires TDH, not later than April 1 of each year, to issue in aggregate a public report summarizing the information submitted on each individual report required by Sections 171.051 and 171.052. Requires the public report to cover the entire previous calendar year and to be compiled from the data in all the abortion reporting forms and the abortion complication reports submitted to TDH in accordance with Sections 171.051 and 171.052. Requires that each public report also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. Requires TDH 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 treated abortion-related complications or of any woman who has had an abortion.

(e) Provides that except as provided by Subsection (d) and Section 245.023 (Public Information; Toll-Free Telephone Number), all information and records held by TDH under this subchapter and Subchapters B and C are confidential and are not open records for the purposes of Chapter 552 (Public Information), Government Code. Prohibits that information from being released or made public, except that releases may be made for statistical purposes, but only if a person, patient, physician, or facility is not identified; with the consent of each person, patient, physician, and facility identified in the information released; to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter or Chapter 245 (Abortion Facilities); or to appropriate state licensing boards to enforce state licensing laws.

(f) Prohibits TDH or an employee of TDH from disclosing to a person or entity outside of TDH the form or contents of the form described by Section 171.021 or the reports or contents of the reports required by this section and Sections 171.051 or 171.052 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 signatory of the form or the subject of the report.

Sec. 171.062. PENALTIES. (a) Provides that a physician who does not file a form required by Section 171.022 or submit a report required by Section 171.051 or 171.052 within 30 days of the date the form or report was due is subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period the report is overdue.

(b) Provides that a physician required to file a form by Section 171.022 or a report by Section 171.051 or 171.052 who has not submitted a complete form or report before the first anniversary of the date the form or report was due is subject to a late fee under Subsection (a) and, in an action brought by TDH, may be directed by a court to submit a complete form or report within a period stated by court order or be subject to sanctions for civil contempt.

Sec. 171.063. OFFENSE. (a) Provides that a person commits an offense if a person fails to submit a form or report required by this Subchapter or Subchapters B and C; intentionally, knowingly, or recklessly submits false information on a form or report required by this subchapter or Subchapters B and C; includes the name or identifying information of the woman who had the abortion in a form or report required by this subchapter or Subchapter C; or includes the name or identifying information of a physician in a public report required by Section 171.061(d).

(b) Provides that a person who discloses confidential identifying information in violation of Section 171.061(f) commits an offense.

(c) Provides that a physician commits an offense if the physician performs an abortion and the physician reasonably believes that the abortion is the result of coercion, as defined by Section 1.07 (Definitions), Penal Code.

(d) Provides that an offense under this section is a Class A misdemeanor.

SECTION 6. Amends Section 245.001, Health and Safety Code, to authorize this chapter to be cited as the Texas Abortion Facility Licensing Act, rather than the Texas Abortion Facility Reporting and Licensing Act.

SECTION 7. Amends Section 245.005(e), Health and Safety Code, to require the licensee, as a condition for renewal of a license, to submit to TDH the annual license renewal fee and an annual report, rather than an annual report including the report required under Section 245.011 (Reporting Requirements; Criminal Penalty).

SECTION 8. Amends Section 248.003, Health and Safety Code, to make a conforming change.

SECTION 9. Repealer: Section 245.011 (Reporting Requirements; Criminal Penalty), Health and Safety Code.

SECTION 10. (a) Requires the Department of State Health Services (DSHS), not later than December 1, 2009, to provide for distribution of the forms required by Subchapter B, Chapter 171, Health and Safety Code, as amended by this Act, and Subchapter C, Chapter 171, Health and Safety Code, as added by this Act, along with instructions for completing the forms.

(b) Requires DSHS, not later than January 1, 2010, to distribute forms as required by Sections 171.022(a), 171.051(h), and 171.052(c), Health and Safety Code, as added by this Act.

(c) Provides that a physician is not required to submit a form or report under Sections 171.022, 171.051, and 171.052, Health and Safety Code, as added by this Act, before January 1, 2010.

(d) Makes application of this Act prospective to January 1, 2010.

SECTION 11. (a) Effective date, except as provided by Subsection (b) or (c) of this section: September 1, 2009.

(b) Effective date, Section 171.063, Health and Safety Code: January 1, 2010.

(c) Effective date, Sections 7 and 9 of this Act: January 1, 2010.