

By: Morrison, Cook, Harless, Heflin,
Kolkhorst, et al.

H.B. No. 3796

Substitute the following for H.B. No. 3796:

By: Solomons

C.S.H.B. No. 3796

A BILL TO BE ENTITLED

AN ACT

relating to informed and voluntary consent for an abortion and the collection and reporting of information related to the performance of an abortion; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subchapter B, Chapter 171, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. VOLUNTARY AND INFORMED CONSENT

SECTION 2. Section 171.018, Health and Safety Code, is amended to read as follows:

Sec. 171.018. OFFENSE. A physician who intentionally performs an abortion on a woman in violation of Section 171.011 [~~this subchapter~~] commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$10,000. In this section, "intentionally" has the meaning assigned by Section 6.03(a), Penal Code.

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

Sec. 171.019. PREVENTION OF COERCED ABORTIONS. (a) Before performing an abortion, a physician shall:

(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

1 the woman provides her voluntary and informed consent; and

2 (2) provide the woman on whom the abortion is to be
3 performed with the coerced abortion form described by Section
4 171.021:

5 (A) in both English and Spanish; and

6 (B) in a language other than English or Spanish,
7 if applicable, under Section 171.021(c).

8 (b) A doctor may not perform an abortion on a woman unless,
9 before the abortion, the woman certifies on the coerced abortion
10 form described by Section 171.021 that she received from the
11 physician the information and materials required by Subsection (a).

12 (c) If the woman indicates on the coerced abortion form or
13 on the abortion reporting form required by Section 171.051 that she
14 is being coerced to have an abortion performed, the physician:

15 (1) shall report abuse or neglect under Chapter 261,
16 Family Code, if applicable;

17 (2) shall provide the referral required by Section
18 171.020(2);

19 (3) shall provide the woman with access to a telephone
20 in a private room; and

21 (4) may not perform the abortion until the woman
22 provides her voluntary and informed consent that the woman states
23 is not a result of coercion.

24 Sec. 171.020. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE.
25 The department shall require each physician who performs an
26 abortion to:

27 (1) maintain a list of domestic violence shelters and

1 assistance programs that do not provide or refer for abortions; and
2 (2) provide a referral to a domestic violence shelter
3 or assistance program that does not provide or refer for abortions
4 if the woman seeking an abortion communicates to the facility, the
5 physician, or an agent of the physician who is performing the
6 abortion that the woman is being abused or is being coerced to have
7 the abortion.

8 Sec. 171.021. CONTENTS OF FORM. (a) The department shall
9 develop a coerced abortion form to be completed by each woman on
10 whom an abortion is performed in this state. The form must include:

11 (1) the following title centered on the page in
12 boldfaced capital letters in 18-point font or larger: "NOTICE";

13 (2) the following statement printed in 14-point font
14 or larger: "It is against the law for a person, regardless of that
15 person's relationship to you, to coerce or force you to have an
16 abortion. By law, a physician cannot perform an abortion, including
17 inducing, prescribing for, or otherwise providing the means for an
18 abortion, unless you give your voluntary and informed consent
19 without coercion or force. It is against the law for a physician to
20 perform an abortion against your will. You have the right to contact
21 any local or state law enforcement agency to receive protection
22 from any actual or threatened physical abuse or violence.";

23 (3) the following statements printed in 14-point font
24 or larger followed by spaces for the woman to initial:

25 (A) "I have been informed in person that no one
26 can coerce or force me to have an abortion and that an abortion
27 cannot be provided to me unless I provide my voluntary and informed

1 consent."; and

2 (B) "I have read the above notice and understand
3 that I have legal protection against being coerced or forced to have
4 an abortion.";

5 (4) spaces for the signature of the woman on whom an
6 abortion is to be performed and the date the form was completed; and

7 (5) spaces for the license number, area of specialty,
8 and signature of the physician who performed the abortion.

9 (b) The department shall provide the form required by
10 Subsection (a) in both English and Spanish.

11 (c) If the department determines that a substantial number
12 of residents in this state speak a primary language other than
13 English or Spanish, the department shall provide the form required
14 by Subsection (a) in that language. The department shall instruct a
15 facility that provides abortions to provide the coerced abortion
16 form in a language other than English or Spanish if the department
17 determines that a substantial number of residents in the area speak
18 a primary language other than English or Spanish.

19 Sec. 171.022. PROVISION AND RETENTION OF COERCED ABORTION
20 FORM. (a) The department shall provide a copy of this section and
21 Sections 171.019-171.021 and the coerced abortion form required by
22 Section 171.019 to:

23 (1) a physician who becomes newly licensed to practice
24 in this state, not later than the 30th day after the date the
25 physician receives the license; and

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

1 (b) A copy of the coerced abortion form certified by the
2 woman shall be placed in the woman's medical file and kept until at
3 least the seventh anniversary of the date on which the form was
4 signed or, if the woman is a minor, at least until the date the woman
5 reaches 20 years of age, whichever is later.

6 (c) The woman on whom an abortion is performed shall be
7 given a copy of the completed coerced abortion form in person before
8 the woman leaves the facility where the abortion is performed.

9 SECTION 4. Chapter 171, Health and Safety Code, is amended
10 by adding Subchapter C to read as follows:

11 SUBCHAPTER C. ABORTION REPORTING

12 Sec. 171.051. ABORTION REPORTING FORM. (a) A physician who
13 performs an abortion must submit a report by mail to the department
14 on each abortion the physician performs. The report must be
15 submitted on a form provided by the department.

16 (b) The report may not identify the name of the patient by
17 any means.

18 (c) The abortion reporting form for each abortion must
19 include the following information to be completed by the patient:

20 (1) the patient's age, race or ethnicity, and marital
21 status and municipality, county, state, and nation of residence;

22 (2) the age of the father of the unborn child at the
23 time of the abortion;

24 (3) a space for the patient to indicate the specific
25 reason the abortion was performed, including:

26 (A) the mother feels coerced or forced to have
27 the abortion;

- 1 (B) the mother has all the children she wants;
2 (C) the mother cannot afford the child;
3 (D) the child has been diagnosed with one or more
4 health problems that are documented in the medical records of the
5 mother;
6 (E) the father of the child opposes the
7 pregnancy;
8 (F) a parent of the mother of the unborn child
9 opposes the pregnancy;
10 (G) the mother fears a loss of family support;
11 (H) the mother fears losing her job;
12 (I) a school counselor recommends abortion;
13 (J) a physician recommends abortion;
14 (K) the pregnancy was a result of rape;
15 (L) the pregnancy was a result of incest; or
16 (M) the mother does not wish to complete this
17 section;
18 (4) the number of previous live births of the patient;
19 (5) the number of previous induced abortions of the
20 patient;
21 (6) the number of previous miscarriages or spontaneous
22 abortions of the patient;
23 (7) the source of referral for the abortion,
24 including:
25 (A) a physician;
26 (B) self;
27 (C) a friend or family member;

- 1 (D) a member of the clergy;
- 2 (E) a school counselor;
- 3 (F) a social services agency;
- 4 (G) the Department of State Health Services;
- 5 (H) a family planning agency; or
- 6 (I) other (specify): _____; and

7 (8) whether or not the woman availed herself of the
8 opportunity to view the printed information required by Subchapter
9 B, and, if so, whether the woman viewed the information described in
10 Section 171.014, through the Internet or by booklet.

11 (d) The abortion reporting form for each abortion must
12 include the following information to be completed by the physician:

13 (1) the name of the abortion facility at which the
14 abortion was performed, the municipality and county in which the
15 facility is located, and whether the facility:

16 (A) is licensed as an abortion facility under
17 Chapter 245;

18 (B) is operating as the private office of a
19 licensed physician;

20 (C) is a licensed hospital;

21 (D) is a licensed hospital satellite clinic; or

22 (E) is a licensed ambulatory surgical center;

23 (2) the license number, area of specialty, and
24 signature of the physician who performed or induced the abortion;

25 (3) a statement that the physician screened the
26 patient for coercion in compliance with Section 171.019;

27 (4) the type of abortion procedure, including:

- 1 (A) nonsurgical abortion, specifying the
2 medication or chemical used;
- 3 (B) suction and curettage;
4 (C) dilation and curettage;
5 (D) dilation and evacuation;
6 (E) labor and induction;
7 (F) dilation and extraction;
8 (G) hysterotomy or hysterectomy; or
9 (H) other (specify): _____;
- 10 (5) the date the abortion was performed;
11 (6) whether the patient survived the abortion, and if
12 the patient did not survive, the cause of death;
- 13 (7) the number of fetuses the patient was carrying;
14 (8) the number of weeks of gestation based on the best
15 medical judgment of the attending physician at the time of the
16 procedure and the weight of the fetus or fetuses, if determinable;
- 17 (9) the method of pregnancy verification, including:
18 (A) urine test;
19 (B) clinical lab test;
20 (C) ultrasound;
21 (D) not tested; or
22 (E) other (specify): _____;
- 23 (10) 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 (11) 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 (specify): _____;
- 5 (12) the total fee collected for performing the
- 6 abortion, including any services related to the abortion;
- 7 (13) the type of anesthetic, if any, used for each
- 8 abortion performed, and whether anesthetic was used for the woman,
- 9 the unborn child or children, or both;
- 10 (14) the method used to dispose of the fetal tissue and
- 11 remains;
- 12 (15) complications for each abortion, including:
- 13 (A) none;
- 14 (B) shock;
- 15 (C) uterine perforation;
- 16 (D) cervical laceration;
- 17 (E) hemorrhage;
- 18 (F) aspiration or allergic response;
- 19 (G) infection or sepsis;
- 20 (H) infant or infants born alive;
- 21 (I) death of mother; or
- 22 (J) other (specify): _____; and
- 23 (16) if the infant or infants were born alive:
- 24 (A) whether life-sustaining measures were
- 25 provided to the infant or infants; and
- 26 (B) the period of time the infant or infants
- 27 survived.

1 (e) If the patient is a minor, the report on each abortion
2 must include:

3 (1) whether the minor's parent, managing conservator,
4 or legal guardian provided the written consent required by Section
5 164.052(a)(19), Occupations Code, and, if so, whether the consent
6 was given:

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

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

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

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

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

25 (5) if judicial authorization was received, the
26 process the physician or the physician's agent used to inform the
27 minor of the judicial bypass, whether court forms were provided to

1 her, and what entity made the court arrangement for the minor.

2 (f) The patient must fill out sections of the form under
3 Subsection (c). Sections to be filled out by the patient must be at
4 the top of the form. The bottom portion of the reporting form must
5 be completed by the physician performing the abortion. The
6 requirement that the patient fill out the patient's portion of the
7 form may be waived only if the abortion is performed to prevent the
8 death of the mother or to avoid harm to a mother described by
9 Section 164.052(a)(18), Occupations Code, or harm to a mother who
10 is a minor described by Section 164.052(a)(19), Occupations Code.
11 If the requirement that the patient fill out the patient's portion
12 of the form is waived under this subsection, the physician
13 performing the abortion shall include in the patient's medical
14 records a signed written statement certifying the nature of the
15 medical emergency.

16 (g) A copy of the abortion reporting form must be maintained
17 in the patient's medical file at least until the seventh
18 anniversary of the date of the abortion. The patient must be given
19 a copy of the completed abortion reporting form in person after the
20 physician and patient complete the form.

21 (h) The department shall provide the abortion reporting
22 form required by this section, together with a copy of this section
23 to:

24 (1) a physician who becomes newly licensed to practice
25 in this state, not later than the 30th day after the date the
26 physician receives the license; and

27 (2) all physicians licensed to practice in this state,

1 not later than December 1 of each year.

2 Sec. 171.052. ABORTION COMPLICATION REPORT. (a) A
3 physician practicing in the state who treats an illness or injury
4 related to complications from an abortion shall complete and submit
5 an abortion complication report to the department. The report must
6 be submitted by mail on the form provided by the department.

7 (b) The department shall prepare an abortion complication
8 report form for all physicians licensed and practicing in this
9 state. A copy of this section must be attached to the form. The
10 form must include:

11 (1) the date and type of the original abortion,
12 including:

13 (A) nonsurgical abortion, specifying the
14 medication or chemical used;

15 (B) suction and curettage;

16 (C) dilation and curettage;

17 (D) dilation and evacuation;

18 (E) labor and induction;

19 (F) dilation and extraction;

20 (G) hysterotomy or hysterectomy; or

21 (H) other (specify): _____;

22 (2) the name and type of facility where the abortion
23 complication was diagnosed and treated, including:

24 (A) an abortion facility licensed under Chapter
25 245;

26 (B) a private office of a licensed physician;

27 (C) a licensed hospital;

- 1 (D) a licensed hospital satellite clinic; or
2 (E) a licensed ambulatory surgical center;
3 (3) the name and type of facility where the abortion
4 was performed, if known;
5 (4) the license number, area of specialty, and
6 signature of the physician who treated the abortion complication;
7 (5) the date on which the abortion complication was
8 diagnosed and treated;
9 (6) a description of the abortion complication,
10 including:
11 (A) none;
12 (B) shock;
13 (C) uterine perforation;
14 (D) cervical laceration;
15 (E) hemorrhage;
16 (F) aspiration or allergic response;
17 (G) infection or sepsis;
18 (H) infant or infants born alive;
19 (I) death of mother; or
20 (J) other (specify): _____;
21 (7) the patient's age, race or ethnicity, and marital
22 status and municipality, county, state, and nation of residence;
23 (8) the number of weeks of gestation at which the
24 abortion was performed based on the best medical judgment of the
25 attending physician at the time of treatment for the abortion
26 complication;
27 (9) the number of previous live births of the patient;

1 (10) the number of previous induced abortions for the
2 patient;

3 (11) the number of previous miscarriages or
4 spontaneous abortions of the patient;

5 (12) whether treatment for the abortion complication
6 was paid for by:

7 (A) private insurance;

8 (B) a public health plan; or

9 (C) personal payment by the patient;

10 (13) the total fee collected for treatment for the
11 abortion complication;

12 (14) whether there was no insurance coverage or
13 insurance coverage was provided by:

14 (A) a fee-for-service insurance company;

15 (B) a managed care company; or

16 (C) another provider; and

17 (15) the type of follow-up care recommended.

18 (c) The department shall provide the abortion complication
19 form required by this section, together with a copy of this section,
20 to:

21 (1) a physician who becomes newly licensed to practice
22 in this state, not later than the 30th day after the date the
23 physician receives the license; and

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

26 (d) A copy of the abortion complication report form must be
27 maintained in the patient's medical file until the seventh

1 anniversary of the date the abortion complication was diagnosed and
2 treated. The patient must receive a copy of the completed form in
3 person before the patient leaves the facility.

4 SECTION 5. Chapter 171, Health and Safety Code, is amended
5 by adding Subchapter D to read as follows:

6 SUBCHAPTER D. PROVISIONS RELATING TO REPORTS; PENALTIES

7 Sec. 171.061. REPORTING REQUIREMENTS. (a) A physician
8 performing an abortion shall complete and submit an abortion
9 reporting form to the department for each abortion as required by
10 Section 171.051 not later than the 15th day of each month for
11 abortions performed in the previous calendar month.

12 (b) A physician required to submit an abortion complication
13 report to the department by Section 171.052 shall submit the report
14 as soon as practicable after diagnosis or treatment of the abortion
15 complication, but in no case more than seven days after the date of
16 the diagnosis or 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 an abortion or treated abortion-related
3 complications or of any woman who has had an abortion.

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

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

12 (2) to medical personnel, appropriate state agencies,
13 or county and district courts to enforce this chapter or Chapter
14 245; or

15 (3) to appropriate state licensing boards to enforce
16 state licensing laws.

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

23 Sec. 171.062. PENALTIES. (a) A physician who does not
24 submit a report required by Section 171.051 or 171.052 within 30
25 days of the date the report was due is subject to a late fee of \$500
26 for each additional 30-day period or portion of a 30-day period the
27 report is overdue.

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

8 Sec. 171.063. OFFENSE. (a) A physician commits an offense
9 if a physician:

10 (1) fails to submit a report required by this
11 subchapter or Subchapter C;

12 (2) intentionally, knowingly, or recklessly submits
13 false information on a report required by this subchapter or
14 Subchapter C;

15 (3) includes the name or identifying information of
16 the woman who had the abortion in a report required by this
17 subchapter or Subchapter C; or

18 (4) includes the name or identifying information of a
19 physician in a public report required by Section 171.061(c).

20 (b) A physician who discloses confidential identifying
21 information in violation of Section 171.061(e) commits an offense.

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

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

26 SECTION 6. Section 245.001, Health and Safety Code, is
27 amended to read as follows:

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

3 SECTION 7. Section 245.005(e), Health and Safety Code, is
4 amended to read as follows:

5 (e) As a condition for renewal of a license, the licensee
6 must submit to the department the annual license renewal fee and an
7 annual report [~~, including the report required under Section~~
8 ~~245.011~~].

9 SECTION 8. Section 248.003, Health and Safety Code, is
10 amended to read as follows:

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

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

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

16 (3) an institution required to be licensed under
17 Chapter 242;

18 (4) an ambulatory surgical center required to be
19 licensed under Chapter 243 (Texas Ambulatory Surgical Center
20 Licensing Act);

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

23 (6) a facility required to be licensed under Chapter
24 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

25 (7) a child care institution, foster group home,
26 foster family home, and child-placing agency, for children in
27 foster care or other residential care who are under the

1 conservatorship of the Department of Protective and Regulatory
2 Services; or

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

5 SECTION 9. Section 245.011, Health and Safety Code, is
6 repealed.

7 SECTION 10. (a) Not later than December 1, 2009, the
8 Department of State Health Services shall develop and make
9 available the forms required by Subchapter B, Chapter 171, Health
10 and Safety Code, as amended by this Act, and Subchapter C, Chapter
11 171, Health and Safety Code, as added by this Act, along with
12 instructions for completing the forms.

13 (b) Not later than January 1, 2010, the Department of State
14 Health Services shall distribute forms as required by Sections
15 171.022(a), 171.051(h), and 171.052(c), Health and Safety Code, as
16 added by this Act.

17 (c) A physician is not required to submit a report under
18 Section 171.051 or 171.052, Health and Safety Code, as added by this
19 Act, before January 1, 2010.

20 (d) Section 171.063, Health and Safety Code, as added by
21 this Act, applies only to an offense committed on or after January
22 1, 2010. For purposes of this section, an offense is committed
23 before January 1, 2010, if any element of the offense occurs before
24 that date. An offense committed before January 1, 2010, is covered
25 by the law in effect when the offense was committed, and the former
26 law is continued in effect for that purpose.

27 SECTION 11. (a) Except as provided by Subsection (b) of

1 this section, this Act takes effect September 1, 2009.

2 (b) Section 171.063, Health and Safety Code, as added by
3 this Act, Section 245.005, Health and Safety Code, as amended by
4 this Act, and the repeal of Section 245.011, Health and Safety Code,
5 by this Act take effect January 1, 2010.