

By: Morrison

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;

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); and

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

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

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

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

19 (2) shall provide the referral required by Section  
20 171.020(2); and

21 (3) 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.";

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."; and

5 (C) "I understand that I will be given access to a  
6 telephone in a private room.";

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

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

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

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

21 Sec. 171.022. PROVISION, SUBMISSION, AND RETENTION OF  
22 COERCED ABORTION FORM. (a) The department shall provide a copy of  
23 this section and the coerced abortion form required by Section  
24 171.019 to:

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

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

3           (b) A physician who performs an abortion shall submit a  
4 coerced abortion form, completed by the woman on whom the abortion  
5 is performed, to the department for each abortion the physician  
6 performs.

7           (c) The original coerced abortion form shall be submitted by  
8 mail.

9           (d) A copy of the coerced abortion form certified by the  
10 woman shall be placed in the woman's medical file and kept until at  
11 least the seventh anniversary of the date on which the form was  
12 signed or, if the woman is a minor, at least until the date the woman  
13 reaches 20 years of age, whichever is later.

14           (e) The woman on whom an abortion is performed shall be  
15 given a copy of the completed coerced abortion form in person before  
16 the woman leaves the facility where the abortion is performed.

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

19                           SUBCHAPTER C. ABORTION REPORTING

20           Sec. 171.051. ABORTION REPORTING FORM. (a) A physician who  
21 performs an abortion must submit a report by mail to the department  
22 on each abortion the physician performs. The report must be  
23 submitted on a form provided by the department.

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

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

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

3           (2) the age of the father of the unborn child at the  
4 time of the abortion;

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

7                   (A) the mother feels coerced or forced to have  
8 the abortion;

9                   (B) the mother has all the children she wants;

10                  (C) the mother cannot afford the child;

11                  (D) the child has been diagnosed with one or more  
12 health problems that are documented in the medical records of the  
13 mother;

14                  (E) the father of the child opposes the  
15 pregnancy;

16                  (F) a parent of the mother of the unborn child  
17 opposes the pregnancy;

18                  (G) the mother fears a loss of family support;

19                  (H) the mother fears losing her job;

20                  (I) a school counselor recommends abortion;

21                  (J) a physician recommends abortion;

22                  (K) the pregnancy was a result of rape;

23                  (L) the pregnancy was a result of incest; or

24                  (M) the mother does not wish to complete this  
25 section;

26           (4) the number of previous live births of the patient;

27           (5) the number of previous induced abortions of the

1 patient;

2 (6) the number of previous miscarriages or spontaneous  
3 abortions of the patient;

4 (7) the source of referral for the abortion,  
5 including:

6 (A) a physician;

7 (B) self;

8 (C) a friend or family member;

9 (D) a member of the clergy;

10 (E) a school counselor;

11 (F) a social services agency;

12 (G) the Department of State Health Services;

13 (H) a family planning agency; or

14 (I) other (specify): \_\_\_\_\_; and

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

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

21 (1) the name of the abortion facility at which the  
22 abortion was performed, the municipality and county in which the  
23 facility is located, and whether the facility:

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

26 (B) is operating as the private office of a  
27 licensed physician;

- 1                   (C) is a licensed hospital;  
2                   (D) is a licensed hospital satellite clinic; or  
3                   (E) is a licensed ambulatory surgical center;  
4           (2) the license number, area of specialty, and  
5 signature of the physician who performed or induced the abortion;  
6           (3) the type of abortion procedure, including:  
7                   (A) nonsurgical abortion, specifying the  
8 medication or chemical used;  
9                   (B) suction and curettage;  
10                  (C) dilation and curettage;  
11                  (D) dilation and evacuation;  
12                  (E) labor and induction;  
13                  (F) dilation and extraction;  
14                  (G) hysterotomy or hysterectomy; or  
15                  (H) other (specify): \_\_\_\_\_;  
16           (4) the date the abortion was performed;  
17           (5) whether the patient survived the abortion, and if  
18 the patient did not survive, the cause of death;  
19           (6) the number of fetuses the patient was carrying;  
20           (7) the number of weeks of gestation based on the best  
21 medical judgment of the attending physician at the time of the  
22 procedure and the weight of the fetus or fetuses, if determinable;  
23           (8) the method of pregnancy verification, including:  
24                   (A) urine test;  
25                   (B) clinical lab test;  
26                   (C) ultrasound;  
27                   (D) not tested; or



- 1                   (E) other (specify): \_\_\_\_\_;  
2           (9) whether the abortion was paid for by:  
3                   (A) private insurance;  
4                   (B) a public health plan; or  
5                   (C) personal payment by patient;  
6           (10) whether there was no insurance coverage or  
7 insurance coverage was provided by:  
8                   (A) a fee-for-service insurance company;  
9                   (B) a managed care company; or  
10                   (C) another source (specify): \_\_\_\_\_;  
11           (11) the total fee collected for performing the  
12 abortion, including any services related to the abortion;  
13           (12) the type of anesthetic, if any, used for each  
14 abortion performed, and whether anesthetic was used for the woman,  
15 the unborn child or children, or both;  
16           (13) the method used to dispose of the fetal tissue and  
17 remains;  
18           (14) complications for each abortion, including:  
19                   (A) none;  
20                   (B) shock;  
21                   (C) uterine perforation;  
22                   (D) cervical laceration;  
23                   (E) hemorrhage;  
24                   (F) aspiration or allergic response;  
25                   (G) infection or sepsis;  
26                   (H) infant or infants born alive;  
27                   (I) death of mother; or

1                   (J) other (specify): \_\_\_\_\_; and

2                   (15) if the infant or infants were born alive:

3                   (A) whether life-sustaining measures were  
4 provided to the infant or infants; and

5                   (B) the period of time the infant or infants  
6 survived.

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

9                   (1) whether the minor's parent, managing conservator,  
10 or legal guardian provided the written consent required by Section  
11 164.052(a)(19), Occupations Code, and, if so, whether the consent  
12 was given:

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

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

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

25                   (3) whether the minor was emancipated and permitted to  
26 have the abortion without the written consent required by Section  
27 164.052(a)(19), Occupations Code;

1           (4) whether judicial authorization was received,  
2 waiving the written consent required by Section 164.052(a)(19),  
3 Occupations Code; and

4           (5) if judicial authorization was received, the  
5 process the physician or the physician's agent used to inform the  
6 minor of the judicial bypass, whether court forms were provided to  
7 her, and what entity made the court arrangement for the minor.

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

22           (g) A copy of the abortion reporting form must be maintained  
23 in the patient's medical file at least until the seventh  
24 anniversary of the date of the abortion. The patient must be given  
25 a copy of the completed abortion reporting form in person after the  
26 physician and patient complete the form.

27           (h) The department shall provide the abortion reporting

1 form required by this section, together with a copy of this section  
2 to:

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

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

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

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

17 (1) the date and type of the original abortion,  
18 including:

19 (A) nonsurgical abortion, specifying the  
20 medication or chemical used;

21 (B) suction and curettage;

22 (C) dilation and curettage;

23 (D) dilation and evacuation;

24 (E) labor and induction;

25 (F) dilation and extraction;

26 (G) hysterotomy or hysterectomy; or

27 (H) other (specify): \_\_\_\_\_;

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

3                   (A) an abortion facility licensed under Chapter  
4 245;

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

6                   (C) a licensed hospital;

7                   (D) a licensed hospital satellite clinic; or

8                   (E) a licensed ambulatory surgical center;

9           (3) the name and type of facility where the abortion  
10 was performed, if known;

11           (4) the license number, area of specialty, and  
12 signature of the physician who treated the abortion complication;

13           (5) the date on which the abortion complication was  
14 diagnosed and treated;

15           (6) a description of the abortion complication,  
16 including:

17                   (A) none;

18                   (B) shock;

19                   (C) uterine perforation;

20                   (D) cervical laceration;

21                   (E) hemorrhage;

22                   (F) aspiration or allergic response;

23                   (G) infection or sepsis;

24                   (H) infant or infants born alive;

25                   (I) death of mother; or

26                   (J) other (specify): \_\_\_\_\_;

27           (7) the patient's age, race or ethnicity, and marital

1 status and municipality, county, state, and nation of residence;

2 (8) the number of weeks of gestation at which the  
3 abortion was performed based on the best medical judgment of the  
4 attending physician at the time of treatment for the abortion  
5 complication;

6 (9) the number of previous live births of the patient;

7 (10) the number of previous induced abortions for the  
8 patient;

9 (11) the number of previous miscarriages or  
10 spontaneous abortions of the patient;

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

13 (A) private insurance;

14 (B) a public health plan; or

15 (C) personal payment by the patient;

16 (13) the total fee collected for treatment for the  
17 abortion complication;

18 (14) whether there was no insurance coverage or  
19 insurance coverage was provided by:

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

21 (B) a managed care company; or

22 (C) another provider; and

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

24 (c) The department shall provide the abortion complication  
25 form required by this section, together with a copy of this section,  
26 to:

27 (1) a physician who becomes newly licensed to practice

1 in this state, not later than the 30th day after the date the  
2 physician receives the license; and

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

5 (d) A copy of the abortion complication report form must be  
6 maintained in the patient's medical file until the seventh  
7 anniversary of the date the abortion complication was diagnosed and  
8 treated. The patient must receive a copy of the completed form in  
9 person before the patient leaves the facility.

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

12 SUBCHAPTER D. PROVISIONS RELATING TO REPORTS; PENALTIES

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

18 (b) A physician required to submit an abortion complication  
19 report to the department by Section 171.052 shall submit the report  
20 as soon as practicable after diagnosis or treatment of the abortion  
21 complication, but in no case more than seven days after the date of  
22 the diagnosis or treatment.

23 (c) A physician performing an abortion shall submit a  
24 certified coerced abortion form for each abortion to the department  
25 as required by Section 171.022 not later than the 15th day of each  
26 month for abortions performed in the previous calendar month.

27 (d) Not later than April 1 of each year, the department

1 shall issue in aggregate a public report summarizing the  
2 information submitted on each individual report required by  
3 Sections 171.051 and 171.052. The public report shall cover the  
4 entire previous calendar year and shall be compiled from the data in  
5 all the abortion reporting forms and the abortion complication  
6 reports submitted to the department in accordance with Sections  
7 171.051 and 171.052. Each public report shall also provide  
8 information for all previous calendar years, adjusted to reflect  
9 any additional information from late or corrected reports. The  
10 department shall ensure that none of the information included in  
11 the public reports could reasonably lead to identification of any  
12 physician who performed an abortion or treated abortion-related  
13 complications or of any woman who has had an abortion.

14 (e) Except as provided by Subsection (d) and Section  
15 245.023, all information and records held by the department under  
16 this subchapter and Subchapters B and C are confidential and are not  
17 open records for the purposes of Chapter 552, Government Code. That  
18 information may not be released or made public, except that release  
19 may be made:

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

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

24 (3) to medical personnel, appropriate state agencies,  
25 or county and district courts to enforce this chapter or Chapter  
26 245; or

27 (4) to appropriate state licensing boards to enforce



1 state licensing laws.

2 (f) The department or an employee of the department may not  
3 disclose to a person or entity outside of the department the form or  
4 contents of the form described by Section 171.021 or the reports or  
5 contents of the reports required by this section and Sections  
6 171.051 and 171.052 in a manner or fashion that permits the person  
7 or entity to whom the form or report is disclosed to identify in any  
8 way a person who is the signatory of the form or the subject of the  
9 report.

10 Sec. 171.062. PENALTIES. (a) A physician who does not file  
11 a form required by Section 171.022 or submit a report required by  
12 Section 171.051 or 171.052 within 30 days of the date the form or  
13 report was due is subject to a late fee of \$500 for each additional  
14 30-day period or portion of a 30-day period the report is overdue.

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

22 Sec. 171.063. OFFENSE. (a) A person commits an offense if  
23 a person:

24 (1) fails to submit a form or report required by this  
25 subchapter or Subchapters B and C;

26 (2) intentionally, knowingly, or recklessly submits  
27 false information on a form or report required by this subchapter or

1 Subchapters B and C;

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

5 (4) includes the name or identifying information of a  
6 physician in a public report required by Section 171.061(d).

7 (b) A person who discloses confidential identifying  
8 information in violation of Section 171.061(f) commits an offense.

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

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

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

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

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

19 (e) As a condition for renewal of a license, the licensee  
20 must submit to the department the annual license renewal fee and an  
21 annual report[~~, including the report required under Section~~  
22 ~~245.011~~].

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

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

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

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

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

5           (4) an ambulatory surgical center required to be  
6 licensed under Chapter 243 (Texas Ambulatory Surgical Center  
7 Licensing Act);

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

10          (6) a facility required to be licensed under Chapter  
11 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

12          (7) a child care institution, foster group home,  
13 foster family home, and child-placing agency, for children in  
14 foster care or other residential care who are under the  
15 conservatorship of the Department of Protective and Regulatory  
16 Services; or

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

19          SECTION 9. Section 245.011, Health and Safety Code, is  
20 repealed.

21          SECTION 10. (a) Not later than December 1, 2009, the  
22 Department of State Health Services shall provide for distribution  
23 of the forms required by Subchapter B, Chapter 171, Health and  
24 Safety Code, as amended by this Act, and Subchapter C, Chapter 171,  
25 Health and Safety Code, as added by this Act, along with  
26 instructions for completing the forms.

27          (b) Not later than January 1, 2010, the Department of State

1 Health Services shall distribute forms as required by Sections  
2 171.022(a), 171.051(h), and 171.052(c), Health and Safety Code, as  
3 added by this Act.

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

7 (d) The changes in law made by this Act apply only to an  
8 offense committed on or after January 1, 2010. For purposes of this  
9 section, an offense is committed before January 1, 2010, if any  
10 element of the offense occurs before that date. An offense  
11 committed before January 1, 2010, is covered by the law in effect  
12 when the offense was committed, and the former law is continued in  
13 effect for that purpose.

14 SECTION 11. (a) Except as provided by Subsection (b) or  
15 (c) of this section, this Act takes effect September 1, 2009.

16 (b) Section 171.063, Health and Safety Code, as added by  
17 this Act, takes effect January 1, 2010.

18 (c) Sections 7 and 9 of this Act take effect January 1, 2010.