

By: Zedler

H.B. No. 1602

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to reporting requirements regarding the provision of an  
3 abortion or treatment for complications resulting from the  
4 provision of an abortion; creating criminal offenses; providing  
5 penalties.

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

7 SECTION 1. Chapter 170, Health and Safety Code, is amended  
8 by adding Section 170.003 to read as follows:

9 Sec. 170.003. COERCIVE ABORTION PROHIBITED; CRIMINAL  
10 PENALTY. (a) A physician commits an offense if the physician:

11 (1) intentionally performs an abortion on a woman; and  
12 (2) knows or should reasonably believe that the woman  
13 is seeking the abortion as the result of coercion, as that term is  
14 defined by Section 1.07, Penal Code.

15 (b) An offense under this section is a Class A misdemeanor.

16 SECTION 2. Chapter 171, Health and Safety Code, is amended  
17 by adding Subchapter C to read as follows:

18 SUBCHAPTER C. REPORTING REQUIREMENTS

19 Sec. 171.021. LEGISLATIVE FINDINGS AND PURPOSE. (a) The  
20 legislature finds that:

21 (1) an abortion, whether surgically or chemically  
22 induced, terminates the life of a whole, separate, unique, living  
23 human being;

24 (2) this state is currently prevented from providing

1 adequate legal remedies to protect the life, health, and welfare of  
2 pregnant women and unborn human life because of the lack of accurate  
3 and relevant statistical data concerning the practice of abortion  
4 and the women seeking abortion services in this state; and

5 (3) there is a need for stricter requirements  
6 regarding the content, accuracy, and consistency of reporting by  
7 physicians who perform abortions in this state and stricter  
8 enforcement of the reporting requirements.

9 (b) The purpose of this subchapter is to further the  
10 important and compelling state interests in:

11 (1) protecting the life and health of a pregnant woman  
12 seeking an elective abortion and, to the extent constitutionally  
13 permissible, the life of the woman's unborn child;

14 (2) fostering the development of standards of  
15 professional conduct in the provision of an abortion; and

16 (3) maintaining accurate statistical data to aid in  
17 providing proper maternal health assistance, regulation, and  
18 education.

19 Sec. 171.022. REPORTING REQUIREMENTS. (a) Not later than  
20 the 15th day of each month, a physician by mail shall submit to the  
21 department the abortion reporting form required by Section 171.023  
22 for each abortion performed by the physician in the preceding  
23 calendar month.

24 (b) As soon as practicable, but not later than 48 hours  
25 after the time of diagnosis or treatment, a physician by mail shall  
26 submit to the department the complications form required by Section  
27 171.024 for each illness or injury in the preceding calendar year

1 that:

2 (1) the physician determines was caused by a medical  
3 complication resulting from an abortion for which the physician  
4 treated a woman; or

5 (2) a woman suspects was caused by a medical  
6 complication resulting from an abortion for which the physician  
7 treated the woman.

8 (c) The reports submitted to the department as required by  
9 this subchapter may not by any means identify the name of a woman on  
10 whom an abortion is performed.

11 Sec. 171.023. ABORTION REPORTING FORM; PARTIAL EXCEPTION.

12 (a) A physician shall report to the department on the form  
13 prescribed by the department the information required by this  
14 section for each abortion performed by the physician.

15 (b) The form must include:

16 (1) the following information, which must be completed  
17 by the woman before anesthesia is administered or the abortion is  
18 performed:

19 (A) the woman's:

20 (i) age;

21 (ii) race or ethnicity;

22 (iii) marital status; and

23 (iv) municipality, county, state, and  
24 nation of residence;

25 (B) the woman's highest level of education,  
26 selected by checking one of the following:

27 (i) did not receive any high school

1 education;

2 (ii) received some high school education  
3 but did not graduate;

4 (iii) is a high school graduate or  
5 recipient of a high school equivalency certificate;

6 (iv) received some college education but is  
7 not a college graduate;

8 (v) obtained an associate's degree;

9 (vi) obtained a bachelor's degree;

10 (vii) obtained a master's degree;

11 (viii) obtained a doctoral degree; or

12 (ix) received other education (specify):

13 \_\_\_\_\_;

14 (C) the age of the father of the unborn child at  
15 the time of the abortion;

16 (D) the method or methods of contraception used  
17 at the time the unborn child was conceived, selected by checking all  
18 applicable methods from the following list:

19 (i) condoms;

20 (ii) spermicide;

21 (iii) male sterilization;

22 (iv) female sterilization;

23 (v) an injectable contraceptive;

24 (vi) an inter-uterine device;

25 (vii) mini pills;

26 (viii) combination pills;

27 (ix) a diaphragm;

- 1                    (x) a cervical cap or vaginal contraceptive  
2 ring;
- 3                    (xi) a contraceptive patch;
- 4                    (xii) a sponge;
- 5                    (xiii) a calendar-based contraceptive  
6 method, including rhythm method or natural family planning or  
7 fertility awareness;
- 8                    (xiv) withdrawal;
- 9                    (xv) no method of contraception; or
- 10                   (xvi) other method (specify): \_\_\_\_\_;
- 11                   (E) a space for the woman to indicate the  
12 specific reason the abortion is to be performed, selected from the  
13 following list:
- 14                   (i) the woman was coerced or forced to have  
15 the abortion;
- 16                   (ii) the woman does not want any more  
17 children;
- 18                   (iii) economic reasons;
- 19                   (iv) the woman's unborn child has been  
20 diagnosed with one or more health problems that are documented in  
21 the woman's medical records;
- 22                   (v) the father of the unborn child opposes  
23 the pregnancy;
- 24                   (vi) the woman's parent opposes the  
25 pregnancy;
- 26                   (vii) the woman fears a loss of family  
27 support;

- 1                   (viii) the woman fears losing her job;  
2                   (ix) a school counselor recommends  
3 abortion;  
4                   (x) a physician recommends abortion;  
5                   (xi) the pregnancy is the result of rape;  
6                   (xii) the pregnancy is the result of  
7 incest;  
8                   (xiii) the woman does not prefer the gender  
9 of the unborn child; or  
10                   (xiv) the woman does not want to complete  
11 this section;  
12                   (F) the number of the woman's previous live  
13 births;  
14                   (G) the number of induced abortions the woman has  
15 previously undergone;  
16                   (H) the number of miscarriages the woman has  
17 previously experienced;  
18                   (I) the source of the woman's referral to the  
19 physician for the abortion, selected from the following list:  
20                   (i) a physician;  
21                   (ii) the woman herself;  
22                   (iii) a friend or family member of the  
23 woman;  
24                   (iv) a member of the clergy;  
25                   (v) a school counselor;  
26                   (vi) a social services agency;  
27                   (vii) the department;

- 1                   (viii) a family planning clinic; or
- 2                   (ix) other (specify): \_\_\_\_\_;

3                   (J) the method of payment for the abortion,  
4 selected from the following list:

- 5                   (i) private insurance;
- 6                   (ii) a public health plan;
- 7                   (iii) personal payment by cash; or
- 8                   (iv) personal payment by check or credit  
9 card; and

10                   (K) whether the woman availed herself of the  
11 opportunity to view the printed information required under  
12 Subchapter B and, if so, whether the woman viewed the information  
13 described by Section 171.014 in printed form or on the department's  
14 Internet website; and

15                   (2) the following information, which must be completed  
16 by the physician:

17                   (A) the name of the facility at which the  
18 abortion was performed, the municipality and county in which the  
19 facility is located, and the type of facility at which the abortion  
20 was performed, selected from the following list:

- 21                   (i) an abortion facility licensed under  
22 Chapter 245;
- 23                   (ii) a private office of a licensed  
24 physician;
- 25                   (iii) a licensed hospital;
- 26                   (iv) a licensed hospital satellite clinic;

27 or

1                   (v) an ambulatory surgical center licensed  
2 under Chapter 243;

3                   (B) the license number, area of specialty, and  
4 signature of the physician who performed the abortion;

5                   (C) a statement that the physician screened the  
6 woman for coercion;

7                   (D) the type of the abortion procedure performed,  
8 selected from the following list:

9                   (i) chemical abortion, specifying the  
10 chemical used;

11                   (ii) suction and curettage;

12                   (iii) dilation and curettage;

13                   (iv) dilation and evacuation;

14                   (v) dilation and extraction;

15                   (vi) labor and induction;

16                   (vii) hysterotomy or hysterectomy; or

17                   (viii) other (specify): \_\_\_\_\_;

18                   (E) the date the abortion was performed;

19                   (F) whether the woman survived the abortion and,  
20 if the woman did not survive, the cause of the woman's death;

21                   (G) the number of fetuses aborted;

22                   (H) the number of weeks of gestation at which the  
23 abortion was performed, based on the best medical judgment of the  
24 attending physician performing the procedure, and the weight of the  
25 fetus or fetuses, if determinable;

26                   (I) the method of pregnancy verification,  
27 selected from the following list:



- 1                   (i) urine test;  
2                   (ii) clinical laboratory test;  
3                   (iii) ultrasound;  
4                   (iv) not tested; or  
5                   (v) other (specify): \_\_\_\_\_;  
6                   (J) the total fee collected from the patient by  
7 the physician for performing the abortion, including any services  
8 related to the abortion;  
9                   (K) whether the abortion procedure was:  
10                   (i) covered by fee-for-service insurance;  
11                   (ii) covered by a managed care benefit  
12 plan;  
13                   (iii) covered by another type of health  
14 benefit plan (specify): \_\_\_\_\_; or  
15                   (iv) not covered by insurance or a health  
16 benefit plan;  
17                   (L) the type of anesthetic, if any, used on the  
18 woman during the abortion;  
19                   (M) the type of anesthetic, if any, used on the  
20 unborn child or children during the abortion;  
21                   (N) the method used to dispose of fetal tissue  
22 and remains;  
23                   (O) complications of the abortion, including:  
24                   (i) none;  
25                   (ii) shock;  
26                   (iii) uterine perforation;  
27                   (iv) cervical laceration;

1                   (v) hemorrhage;

2                   (vi) aspiration or allergic response;

3                   (vii) infection or sepsis;

4                   (viii) infant or infants born alive;

5                   (ix) death of woman; or

6                   (x) other (specify): \_\_\_\_\_;

7                   (P) if an infant was born alive during the  
8 abortion:

9                   (i) whether life-sustaining measures were  
10 provided to the infant; and

11                   (ii) the period of time the infant  
12 survived; and

13                   (Q) for each abortion performed on a woman who is  
14 younger than 18 years of age:

15                   (i) whether:

16                   (a) the minor's parent, managing  
17 conservator, or legal guardian provided the written consent  
18 required by Section 164.052(a)(19), Occupations Code;

19                   (b) the minor obtained judicial  
20 authorization under Section 33.003 or 33.004, Family Code, for the  
21 minor to consent to the abortion;

22                   (c) the woman is emancipated and  
23 permitted under law to have the abortion without the written  
24 consent required by Section 164.052(a)(19), Occupations Code, or  
25 judicial authorization; or

26                   (d) the physician concluded and  
27 documented in writing in the patient's medical record that on the

1 basis of the physician's good faith clinical judgment a condition  
2 existed that complicated the medical condition of the pregnant  
3 minor and necessitated the immediate abortion of her pregnancy to  
4 avert her death or to avoid a serious risk of substantial impairment  
5 of a major bodily function and that there was insufficient time to  
6 obtain the consent of the minor's parent, managing conservator, or  
7 legal guardian;

8 (ii) if the minor's parent, managing  
9 conservator, or legal guardian gave written consent, whether the  
10 consent was given:

11 (a) in person at the time of the  
12 abortion; or

13 (b) at a place other than the location  
14 where the abortion was performed; and

15 (iii) if the minor obtained judicial  
16 authorization:

17 (a) the process the physician or  
18 physician's agent used to inform the minor of the availability of  
19 judicial bypass as an alternative to the written consent required  
20 by Section 164.052(a)(19), Occupations Code;

21 (b) whether court forms were provided  
22 to the minor; and

23 (c) who made arrangements for the  
24 minor for the court appearance.

25 (c) The information required by Subsection (b)(1) must be at  
26 the top of the form. The information required by Subsection (b)(2)  
27 must be at the bottom of the form.

1        (d) A woman is required to complete the information required  
2 by Subsection (b)(1) unless the abortion is necessary to:

3            (1) prevent the woman's death or to avoid harm to the  
4 woman, as described by Section 164.052(a)(18), Occupations Code; or

5            (2) avert the death of or to avoid harm to a woman who  
6 is a minor, as described by Section 164.052(a)(19), Occupations  
7 Code.

8        (e) If the woman does not complete the required information,  
9 the physician who performs the abortion shall include in the  
10 woman's medical file a signed written statement certifying the  
11 nature of the medical emergency described by Subsection (d).

12        (f) A physician shall maintain a copy of each completed form  
13 in the woman's medical file until the later of:

14            (1) the seventh anniversary of the date on which the  
15 form was signed; or

16            (2) the woman's 20th birthday.

17        (g) A physician or the physician's agent shall provide to  
18 each woman required to complete a form under this section a copy of  
19 the completed form before the woman leaves the facility where the  
20 abortion was performed.

21        (h) The department shall provide a copy of the abortion  
22 reporting form:

23            (1) to each physician licensed to practice in this  
24 state not later than December 1 of each year; and

25            (2) to each physician newly licensed to practice in  
26 this state not later than the 30th day after the date the physician  
27 receives that license.

1        (i) The form prescribed by this section must comply with the  
2 requirements of Section 171.014(b)(1).

3        Sec. 171.024. COMPLICATION REPORTING FORM. (a) A  
4 physician shall report to the department on the form prescribed by  
5 the department the information required by this section on the  
6 physician's treatment of an illness or injury related to a medical  
7 complication resulting from the performance of an abortion.

8        (b) The form must include the following information to be  
9 completed by the physician providing the treatment:

10            (1) the date of the abortion that caused or may have  
11 caused the complication;

12            (2) the type of abortion that caused or may have caused  
13 the complication, selected from the following list:

14                    (A) chemical abortion, specifying the chemical  
15 used;

16                    (B) suction and curettage;

17                    (C) dilation and curettage;

18                    (D) dilation and evacuation;

19                    (E) dilation and extraction;

20                    (F) labor and induction;

21                    (G) hysterotomy or hysterectomy; or

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

23            (3) the name and type of the facility where the  
24 abortion complication was diagnosed and treated, selected from the  
25 following list:

26                    (A) an abortion facility licensed under Chapter  
27 245;

- 1                   (B) a private office of a licensed physician;  
2                   (C) a licensed hospital;  
3                   (D) a licensed hospital satellite clinic; or  
4                   (E) an ambulatory surgical center licensed under  
5 Chapter 243;  
6                   (4) the name and type of the facility where the  
7 abortion was provided, if known;  
8                   (5) the license number, area of specialty, and  
9 signature of the physician who treated the abortion complication;  
10                   (6) the date on which the abortion complication was  
11 treated;  
12                   (7) a description of the complication or  
13 complications, selected from the following list:  
14                   (A) none;  
15                   (B) shock;  
16                   (C) uterine perforation;  
17                   (D) cervical laceration;  
18                   (E) hemorrhage;  
19                   (F) aspiration or allergic response;  
20                   (G) infection or sepsis;  
21                   (H) infant or infants born alive;  
22                   (I) death of woman; or  
23                   (J) other (specify): \_\_\_\_\_;  
24                   (8) the number of weeks of gestation at which the  
25 abortion was performed, based on the best medical judgment of the  
26 attending physician at the time of the treatment for the  
27 complication;

- 1           (9) the number of the woman's previous live births;  
2           (10) the number of previous induced abortions the  
3 woman has undergone;  
4           (11) the number of miscarriages the woman has  
5 previously experienced;  
6           (12) whether the treatment for the complication was  
7 paid for by:  
8                   (A) private insurance;  
9                   (B) a public health plan;  
10                  (C) personal payment by cash; or  
11                  (D) personal payment by check or credit card;  
12           (13) the total fee collected by the physician for  
13 treatment of the complication;  
14           (14) whether the treatment for the complication was:  
15                   (A) covered by fee-for-service insurance;  
16                   (B) covered by a managed care benefit plan;  
17                   (C) covered by another type of health benefit  
18 plan (specify): \_\_\_\_\_; or  
19                   (D) not covered by insurance or a health benefit  
20 plan; and  
21           (15) the type of follow-up care recommended by the  
22 physician after the physician provides treatment for the  
23 complication.  
24           (c) A physician shall maintain a copy of each completed form  
25 in the woman's medical file until the later of:  
26                   (1) the seventh anniversary of the date on which the  
27 form was signed; or

1           (2) the woman's 20th birthday.

2           (d) A physician or the physician's agent shall provide to  
3 each woman for whom a form is completed under this section a copy of  
4 the completed form before the woman leaves the facility where the  
5 treatment was received.

6           (e) The department shall provide a copy of the complication  
7 form:

8           (1) to each physician licensed to practice in this  
9 state not later than December 1 of each year; and

10           (2) to each physician newly licensed to practice in  
11 this state not later than the 30th day after the physician receives  
12 that license.

13           (f) The form prescribed by this section must comply with the  
14 requirements of Section 171.014(b)(1).

15           Sec. 171.025. CONFIDENTIAL INFORMATION. (a) Except as  
16 provided by Section 171.028 and Subsection (b), all information  
17 received or maintained by the department under this subchapter is  
18 confidential and is not subject to disclosure under Chapter 552,  
19 Government Code.

20           (b) A department employee may disclose information  
21 described by Subsection (a):

22           (1) for statistical purposes, but only if a person or  
23 facility is not identified;

24           (2) to a medical professional, a state agency, or a  
25 county or district court for purposes of enforcing this chapter or  
26 Chapter 245; or

27           (3) to a state licensing board for purposes of



1 enforcing state licensing laws.

2 Sec. 171.026. PENALTIES. (a) The commissioner of state  
3 health services may assess an administrative penalty against a  
4 physician who fails to submit a report within the time required by  
5 Section 171.022 in the amount of \$500 for each 30-day period or  
6 portion of a 30-day period the report remains overdue.

7 (b) The commissioner may bring an action against a physician  
8 who fails to file a report required under Section 171.022 before the  
9 first anniversary of the date the report was due to compel the  
10 physician to submit a complete report within a time stated by the  
11 court order or be subject to sanctions for civil contempt.

12 Sec. 171.027. OFFENSE; CRIMINAL PENALTY. (a) A physician  
13 commits an offense if the physician:

14 (1) fails to submit a report required by this  
15 subchapter;

16 (2) intentionally, knowingly, or recklessly submits  
17 false information in a report required by this subchapter;

18 (3) includes in a report required by this subchapter  
19 the name or identifying information of a woman on whom the physician  
20 performed an abortion; or

21 (4) discloses confidential identifying information in  
22 violation of Section 171.025.

23 (b) An offense under this section is a Class A misdemeanor.

24 Sec. 171.028. PUBLIC REPORT BY DEPARTMENT. (a) Not later  
25 than April 1 of each year, the department, in a form accessible by  
26 the public, shall issue a report that summarizes the information  
27 reported under Section 171.022 during the preceding calendar year.

1        (b) Each report must include data from the reports issued  
2 under this section in previous years, including updated or  
3 corrected information for those reports.

4        (c) The department shall ensure that a report issued under  
5 this section does not contain any information that could reasonably  
6 lead to the identification of:

7            (1) a woman on whom an abortion was performed or who  
8 received treatment for a complication resulting from an abortion;  
9 or

10           (2) a physician who performed an abortion or treated a  
11 complication resulting from an abortion.

12        SECTION 3. Section 245.001, Health and Safety Code, is  
13 amended to read as follows:

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

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

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

22        SECTION 5. Section 248.003, Health and Safety Code, is  
23 amended to read as follows:

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

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

27            (2) a person required to be licensed under Chapter 241

1 (Texas Hospital Licensing Law);

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

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

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

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

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

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

18 SECTION 6. Effective January 1, 2012, Section 245.011,  
19 Health and Safety Code, is repealed.

20 SECTION 7. (a) Not later than December 1, 2011, the  
21 Department of State Health Services shall develop the forms  
22 required by Sections 171.023 and 171.024, Health and Safety Code,  
23 as added by this Act.

24 (b) Not later than January 1, 2012, the Department of State  
25 Health Services shall distribute the forms required by Sections  
26 171.023 and 171.024, Health and Safety Code, as added by this Act.

27 (c) Notwithstanding Section 171.022, Health and Safety

1 Code, as added by this Act, a physician is not required to submit a  
2 report required by Section 171.022, Health and Safety Code, as  
3 added by this Act, before January 1, 2012.

4 SECTION 8. Not later than April 1, 2013, the Department of  
5 State Health Services shall issue the initial report required by  
6 Section 171.028, Health and Safety Code, as added by this Act.

7 SECTION 9. (a) Except as otherwise provided by this Act,  
8 this Act takes effect September 1, 2011.

9 (b) Sections 170.003 and 171.027, Health and Safety Code, as  
10 added by this Act, and Sections 245.001, 245.005, and 248.003,  
11 Health and Safety Code, as amended by this Act, take effect January  
12 1, 2012.