

By: Zedler

H.B. No. 80

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; imposing a fee.

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 171.024
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 complication reporting form required
27 by Section 171.025 for each illness or injury of a woman in the

1 preceding calendar year that:

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

5 (2) the 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. REPORTING FEE. A physician submitting a
12 reporting form under Section 171.022(a) or (b) shall pay to the
13 department for each form submitted a fee in an amount, set by the
14 department, that is reasonably necessary to cover the costs
15 associated with administering the department's duties under this
16 chapter.

17 Sec. 171.024. ABORTION REPORTING FORM; PARTIAL EXCEPTION.

18 (a) A physician shall report to the department on the form
19 prescribed by the department the information required by this
20 section for each abortion performed by the physician.

21 (b) The form must include:

22 (1) the following information, which must be completed
23 by the woman before anesthesia is administered or the abortion is
24 performed:

25 (A) the woman's:

26 (i) age;

27 (ii) race or ethnicity;

1 (iii) marital status; and
2 (iv) municipality, county, state, and
3 nation of residence;

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

6 (i) did not receive any high school
7 education;

8 (ii) received some high school education
9 but did not graduate;

10 (iii) is a high school graduate or
11 recipient of a high school equivalency certificate;

12 (iv) received some college education but is
13 not a college graduate;

14 (v) obtained an associate's degree;

15 (vi) obtained a bachelor's degree;

16 (vii) obtained a master's degree;

17 (viii) obtained a doctoral degree; or

18 (ix) received other education (specify):

19 _____;

20 (C) the age of the father of the unborn child at
21 the time of the abortion;

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

25 (i) condoms;

26 (ii) spermicide;

27 (iii) male sterilization;

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

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

1 (iii) a friend or family member of the
2 woman;

3 (iv) a member of the clergy;

4 (v) a school counselor;

5 (vi) a social services agency;

6 (vii) the department;

7 (viii) a family planning clinic; or

8 (ix) other (specify): _____;

9 (J) the method of payment for the abortion,
10 selected from the following list:

11 (i) private insurance;

12 (ii) a public health plan;

13 (iii) personal payment by cash; or

14 (iv) personal payment by check or credit
15 card; and

16 (K) whether the woman availed herself of the
17 opportunity to view the information required under Subchapter B
18 and, if so, whether the woman viewed the informational materials
19 described by Section 171.014 in printed form or on the department's
20 Internet website; and

21 (2) the following information, which must be completed
22 by the physician:

23 (A) the name of the facility at which the
24 abortion was performed, the municipality and county in which the
25 facility is located, and the type of facility at which the abortion
26 was performed, selected from the following list:

27 (i) an abortion facility licensed under

1 Chapter 245;

2 (ii) a private office of a licensed
3 physician;

4 (iii) a licensed hospital;

5 (iv) a licensed hospital satellite clinic;

6 or

7 (v) an ambulatory surgical center licensed
8 under Chapter 243;

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

11 (C) a statement that the physician screened the
12 woman to determine whether:

13 (i) coercion, as defined by Section 1.07,
14 Penal Code, is a reason that the woman is seeking the abortion; and

15 (ii) the woman is a victim of an offense
16 described by Section 22.011(a)(2), Penal Code;

17 (D) the type of the abortion procedure performed,
18 selected from the following list:

19 (i) chemical abortion, specifying the
20 chemical used;

21 (ii) suction and curettage;

22 (iii) dilation and curettage;

23 (iv) dilation and evacuation;

24 (v) dilation and extraction;

25 (vi) labor and induction;

26 (vii) hysterotomy or hysterectomy; or

27 (viii) other (specify): _____;

- 1 (E) the date the abortion was performed;
2 (F) whether the woman survived the abortion and,
3 if the woman did not survive, the cause of the woman's death;
4 (G) the number of fetuses aborted;
5 (H) the number of weeks of gestation at which the
6 abortion was performed, based on the best medical judgment of the
7 attending physician performing the procedure, and the weight of the
8 fetus or fetuses, if determinable;
9 (I) the method of pregnancy verification,
10 selected from the following list:
11 (i) urine test;
12 (ii) clinical laboratory test;
13 (iii) ultrasound;
14 (iv) not tested; or
15 (v) other (specify): _____;
16 (J) the total fee collected from the patient by
17 the physician for performing the abortion, including any services
18 related to the abortion;
19 (K) whether the abortion procedure was:
20 (i) covered by fee-for-service insurance;
21 (ii) covered by a managed care benefit
22 plan;
23 (iii) covered by another type of health
24 benefit plan (specify): _____; or
25 (iv) not covered by insurance or a health
26 benefit plan;
27 (L) the type of anesthetic, if any, used on the

1 woman during the abortion;

2 (M) the type of anesthetic, if any, used on the
3 unborn child or children during the abortion;

4 (N) the method used to dispose of fetal tissue
5 and remains;

6 (O) complications of the abortion, including:

7 (i) none;

8 (ii) shock;

9 (iii) uterine perforation;

10 (iv) cervical laceration;

11 (v) hemorrhage;

12 (vi) aspiration or allergic response;

13 (vii) infection or sepsis;

14 (viii) infant or infants born alive;

15 (ix) death of woman; or

16 (x) other (specify): _____;

17 (P) if an infant was born alive during the
18 abortion:

19 (i) whether life-sustaining measures were
20 provided to the infant; and

21 (ii) the period of time the infant
22 survived; and

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

25 (i) whether:

26 (a) the minor's parent, managing
27 conservator, or legal guardian provided the written consent

1 required by Section 164.052(a)(19), Occupations Code;

2 (b) the minor obtained judicial
3 authorization under Section 33.003 or 33.004, Family Code, for the
4 minor to consent to the abortion;

5 (c) the woman is emancipated and
6 permitted under law to have the abortion without the written
7 consent required by Section 164.052(a)(19), Occupations Code, or
8 judicial authorization; or

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

18 (ii) if the minor's parent, managing
19 conservator, or legal guardian gave written consent, whether the
20 consent was given:

21 (a) in person at the time of the
22 abortion; or

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

25 (iii) if the minor obtained judicial
26 authorization:

27 (a) the process the physician or

1 physician's agent used to inform the minor of the availability of
2 judicial bypass as an alternative to the written consent required
3 by Section 164.052(a)(19), Occupations Code;

4 (b) whether court forms were provided
5 to the minor; and

6 (c) who made arrangements for the
7 minor for the court appearance.

8 (c) The information required by Subsection (b)(1) must be at
9 the top of the form. The information required by Subsection (b)(2)
10 must be at the bottom of the form.

11 (d) A woman is required to complete the information required
12 by Subsection (b)(1) unless the abortion is medically necessary, as
13 certified by a physician, to prevent death or the serious risk of
14 substantial impairment of a major bodily function resulting from a
15 life-threatening physical condition that is aggravated by, is
16 caused by, or arises from the woman's pregnancy.

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

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

23 (1) the seventh anniversary of the date on which the
24 form was signed; or

25 (2) the woman's 25th birthday.

26 (g) A physician or the physician's agent shall provide to
27 each woman required to complete a form under this section a copy of

1 the completed form before the woman leaves the facility where the
2 abortion was performed.

3 (h) The department shall make the abortion reporting form
4 available on the department's Internet website.

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

7 Sec. 171.025. COMPLICATION REPORTING FORM. (a) A
8 physician shall report to the department on the form prescribed by
9 the department the information required by this section on the
10 physician's treatment of an illness or injury related to a medical
11 complication resulting from the performance of an abortion.

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

14 (1) the date of the abortion that caused or may have
15 caused the complication;

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

18 (A) chemical abortion, specifying the chemical
19 used;

20 (B) suction and curettage;

21 (C) dilation and curettage;

22 (D) dilation and evacuation;

23 (E) dilation and extraction;

24 (F) labor and induction;

25 (G) hysterotomy or hysterectomy; or

26 (H) other (specify): _____;

27 (3) the name and type of the facility where the

1 abortion complication was diagnosed and treated, selected from the
2 following list:

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) an ambulatory surgical center licensed under
9 Chapter 243;

10 (4) the name and type of the facility where the
11 abortion was provided, if known;

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

14 (6) the date on which the abortion complication was
15 treated;

16 (7) a description of the complication or
17 complications, selected from the following list:

18 (A) none;

19 (B) shock;

20 (C) uterine perforation;

21 (D) cervical laceration;

22 (E) hemorrhage;

23 (F) aspiration or allergic response;

24 (G) infection or sepsis;

25 (H) infant or infants born alive;

26 (I) death of woman; or

27 (J) other (specify): _____;

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

5 (9) the number of the woman's previous live births;

6 (10) the number of previous induced abortions the
7 woman has undergone;

8 (11) the number of miscarriages the woman has
9 previously experienced;

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

12 (A) private insurance;

13 (B) a public health plan;

14 (C) personal payment by cash; or

15 (D) personal payment by check or credit card;

16 (13) the total fee collected by the physician for
17 treatment of the complication;

18 (14) whether the treatment for the complication was:

19 (A) covered by fee-for-service insurance;

20 (B) covered by a managed care benefit plan;

21 (C) covered by another type of health benefit
22 plan (specify): _____; or

23 (D) not covered by insurance or a health benefit
24 plan; and

25 (15) the type of follow-up care recommended by the
26 physician after the physician provides treatment for the
27 complication.

1 (c) A physician shall maintain a copy of each completed form
2 in the woman's medical file until the later of:

3 (1) the seventh anniversary of the date on which the
4 form was signed; or

5 (2) the woman's 25th birthday.

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

10 (e) The department shall make the complication form
11 available on the department's Internet website.

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

14 Sec. 171.026. CONFIDENTIAL INFORMATION. (a) Except as
15 provided by Section 171.029 and Subsection (b), all information
16 received or maintained by the department under this subchapter is
17 confidential and is not subject to disclosure under Chapter 552,
18 Government Code.

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

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

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

26 (3) to a state licensing board for purposes of
27 enforcing state licensing laws.

1 Sec. 171.027. PENALTIES. (a) The commissioner of state
2 health services may assess against a physician who fails to submit a
3 report within the time required by Section 171.022 an
4 administrative penalty in the amount of \$500 for each 30-day period
5 or portion of a 30-day period the report remains overdue.

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

11 Sec. 171.028. OFFENSE; CRIMINAL PENALTY. (a) A physician
12 commits an offense if:

13 (1) the physician fails to submit a report required by
14 this subchapter;

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

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

21 (4) the physician or the physician's agent discloses
22 identifying information that is confidential under Section
23 171.026.

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

25 Sec. 171.029. PUBLIC DATA POSTING BY DEPARTMENT. (a) Not
26 later than April 1 of each year, the department shall post on the
27 department's Internet website statistical data that details the

1 information reported under Section 171.022 during the preceding
2 calendar year.

3 (b) Each posting under Subsection (a) must include data from
4 the postings made under this section in previous years, including
5 updated or corrected information for those postings. Each Internet
6 web page containing a posting from a previous year must indicate at
7 the bottom of the web page the date on which the data contained on
8 the web page was most recently updated or corrected.

9 (c) The department shall ensure that a posting made under
10 this section does not contain any information that could reasonably
11 lead to the identification of:

12 (1) a woman on whom an abortion was performed or who
13 received treatment for a complication resulting from an abortion;
14 or

15 (2) a physician who performed an abortion or treated a
16 complication resulting from an abortion.

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

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

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

23 (e) As a condition for renewal of a license, the licensee
24 must submit to the department the annual license renewal fee and an
25 annual report[~~, including the report required under Section~~
26 ~~245.011~~].

27 SECTION 5. Section 248.003, Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

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

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

14 (6) a facility required to be licensed under Chapter
15 245 (Texas Abortion Facility [~~Reporting and~~] Licensing Act);

16 (7) a child care institution, foster group home,
17 foster family home, and child-placing agency, for children in
18 foster care or other residential care who are under the
19 conservatorship of the Department of Family and Protective [~~and~~
20 ~~Regulatory~~] Services; or

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

23 SECTION 6. Effective January 1, 2014, Section 245.011,
24 Health and Safety Code, is repealed.

25 SECTION 7. (a) Not later than December 1, 2013, the
26 Department of State Health Services shall:

27 (1) make available the forms required by Sections

1 171.024 and 171.025, Health and Safety Code, as added by this Act;
2 and

3 (2) set the fee described by Section 171.023, Health
4 and Safety Code, as added by this Act.

5 (b) Notwithstanding Section 171.022, Health and Safety
6 Code, as added by this Act, a physician is not required to submit a
7 report required by Section 171.022, Health and Safety Code, as
8 added by this Act, before January 1, 2014.

9 SECTION 8. Not later than April 1, 2015, the Department of
10 State Health Services shall make the data posting required by
11 Section 171.029, Health and Safety Code, as added by this Act.

12 SECTION 9. The changes in law made by this Act apply only to
13 an offense committed on or after January 1, 2014. An offense
14 committed before that date is governed by the law in effect on the
15 date the offense was committed, and the former law is continued in
16 effect for that purpose. For purposes of this section, an offense
17 was committed before January 1, 2014, if any element of the offense
18 occurred before that date.

19 SECTION 10. (a) Except as otherwise provided by this Act,
20 this Act takes effect on the 91st day after the last day of the
21 legislative session.

22 (b) Sections 170.003 and 171.028, Health and Safety Code, as
23 added by this Act, and Sections 245.001, 245.005, and 248.003,
24 Health and Safety Code, as amended by this Act, take effect January
25 1, 2014.