

## **BILL ANALYSIS**

C.S.H.B. 215  
By: Murphy  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that more information is needed on the certification form by a physician in regard to an abortion performed on a viable unborn child during the third trimester of pregnancy on the basis of the fetus having a severe and irreversible abnormality. They also note that there is a lack of information regarding how minors obtain authorization for abortions and that better data will give legislators proper insight into how minors obtain abortions in Texas. C.S.H.B. 215 seeks to address these issues by providing for certification on the applicable form by a physician of the identified fetal abnormality and by providing for additional reporting requirements for abortions performed on women younger than 18 years of age.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 215 amends the Health and Safety Code to change from the Department of State Health Services to the Health and Human Services Commission (HHSC) the agency to which a physician certifies that it was in the physician's best medical judgment to perform an abortion on a viable unborn child during the third trimester of pregnancy based on certain conclusions. The bill requires a physician certifying that such an abortion was authorized on the basis of the fetus having a severe and irreversible abnormality, identified by reliable diagnostic procedures, to certify in writing on the form submitted to HHSC the fetal abnormality identified by the physician.

C.S.H.B. 215 requires a physician who performs an abortion on a woman who is younger than 18 years of age to document in the woman's medical record and report the following to HHSC, as appropriate:

- one of the following methods for obtaining authorization for the abortion: the woman's parent, managing conservator, or legal guardian provided written consent; the woman obtained judicial authorization; the woman consented to the abortion, if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without written consent or judicial authorization; or the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment a condition existed that complicated the woman's medical condition and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily

function and there was insufficient time to obtain the required consent;

- if the woman's parent, managing conservator, or legal guardian provided the necessary written consent, whether the consent was given in person at the location where the abortion was performed or at a place other than the location where the abortion was performed; and
- if the woman obtained judicial authorization, if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to obtaining written consent; whether the court forms were provided to the woman by the physician or the physician's agent; and whether the physician or the physician's agent made arrangements for the woman's court appearance.

C.S.H.B. 215 establishes that all information and records held by HHSC under the bill's provisions relating to reporting requirements for abortions performed on women younger than 18 years of age are confidential and are not open records for the purposes of state public information law, subject to certain exceptions. The bill prohibits that information from being released or made public on subpoena or otherwise, except under specified circumstances. The bill prohibits any information released by HHSC from identifying by any means the county in which a minor obtained judicial authorization for an abortion.

C.S.H.B. 215 applies only to an abortion performed on or after December 1, 2017.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 215 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 170.002(c), Health and Safety Code, is amended to read as follows:

(c) A physician who performs an abortion that, according to the physician's best medical judgment at the time of the abortion, is to abort a viable unborn child during the third trimester of the pregnancy shall certify in writing to the department, on a form prescribed by the department, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b)(2) or (3). If the physician certifies the abortion was authorized by Subsection (b)(3), the physician shall certify in writing on the form the fetal abnormality identified by the physician. The certification must be made not later than the 30th day after the date the abortion was performed.

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 170.002(c), Health and Safety Code, is amended to read as follows:

(c) A physician who performs an abortion that, according to the physician's best medical judgment at the time of the abortion, is to abort a viable unborn child during the third trimester of the pregnancy shall certify in writing to the commission ~~department~~, on a form prescribed by the commission ~~department~~, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b)(2) or (3). If the physician certifies the abortion was authorized by Subsection (b)(3), the physician shall certify in writing on the form the fetal abnormality identified by the physician. The certification must be made not later than the 30th day after the date the abortion was

SECTION 2. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED ON WOMEN YOUNGER THAN 18 YEARS OF AGE. For each abortion performed on a woman who is younger than 18 years of age, the physician who performed the abortion shall document in the woman's medical record and report to the department:

(1) one of the following methods for obtaining authorization for the abortion:

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

(B) the woman obtained judicial authorization under Section 33.003 or 33.004, Family Code;

(C) the woman consented to the abortion if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code, or without judicial authorization under Section 33.003 or 33.004, Family Code; or

(D) the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment:

(i) a condition existed that complicated the medical condition of the woman and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily function; and  
(ii) there was insufficient time to obtain the consent of the woman's parent, managing conservator, or legal guardian;

(2) if the woman's parent, managing conservator, or legal guardian provided the written consent described by Subdivision (1)(A), whether the consent was given:

(A) in person at the location where the abortion was performed; or

(B) at a place other than the location where the abortion was performed; and

(3) if the woman obtained the judicial authorization described by Subdivision (1)(B):

performed.

SECTION 2. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED ON WOMEN YOUNGER THAN 18 YEARS OF AGE. (a) For each abortion performed on a woman who is younger than 18 years of age, the physician who performed the abortion shall document in the woman's medical record and report to the commission:

(1) one of the following methods for obtaining authorization for the abortion:

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

(B) the woman obtained judicial authorization under Section 33.003 or 33.004, Family Code;

(C) the woman consented to the abortion if the woman has had the disabilities of minority removed and is authorized under law to have the abortion without the written consent required by Section 164.052(a)(19), Occupations Code, or without judicial authorization under Section 33.003 or 33.004, Family Code; or

(D) the physician concluded and documented in writing in the woman's medical record that on the basis of the physician's good faith clinical judgment:

(i) a condition existed that complicated the medical condition of the woman and necessitated the immediate abortion of the woman's pregnancy to avert the woman's death or to avoid a serious risk of substantial impairment of a major bodily function; and  
(ii) there was insufficient time to obtain the consent of the woman's parent, managing conservator, or legal guardian;

(2) if the woman's parent, managing conservator, or legal guardian provided the written consent described by Subdivision (1)(A), whether the consent was given:

(A) in person at the location where the abortion was performed; or

(B) at a place other than the location where the abortion was performed; and

(3) if the woman obtained the judicial authorization described by Subdivision (1)(B):

(A) if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;  
(B) whether the court forms were provided to the woman by the physician or the physician's agent; and  
(C) whether the physician or the physician's agent made arrangements for the woman's court appearance.

(A) if applicable, the process the physician or physician's agent used to inform the woman of the availability of petitioning for judicial authorization as an alternative to the written consent required by Section 164.052(a)(19), Occupations Code;  
(B) whether the court forms were provided to the woman by the physician or the physician's agent; and  
(C) whether the physician or the physician's agent made arrangements for the woman's court appearance.

(b) Except as provided by Section 245.023, all information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except release may be made:

(1) for statistical purposes, but only if a person, patient, or health care facility is not identified;

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

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(c) Any information released by the commission may not identify by any means the county in which a minor obtained judicial authorization for an abortion under Chapter 33, Family Code.

SECTION 3. Section 170.002, Health and Safety Code, as amended by this Act, and Section 171.006, Health and Safety Code, as added by this Act, apply only to an abortion performed on or after December 1, 2017. An abortion performed before December 1, 2017, is governed by the law applicable to the abortion immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. Same as introduced version.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day

SECTION 4. Same as introduced version.

after the last day of the legislative session.