

SENATE AMENDMENTS

2nd Printing

By: Capriglione, Sheffield, Springer,
Laubenberg, Burkett, et al.

H.B. No. 2962

A BILL TO BE ENTITLED

1 AN ACT
2 relating to reporting requirements by certain physicians and health
3 care facilities for abortion complications; authorizing a civil
4 penalty.

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

6 SECTION 1. Subchapter A, Chapter 171, Health and Safety
7 Code, is amended by adding Section 171.006 to read as follows:

8 Sec. 171.006. ABORTION COMPLICATION REPORTING
9 REQUIREMENTS; CIVIL PENALTY. (a) In this section "abortion
10 complication" means any harmful event or adverse outcome with
11 respect to a patient related to an abortion that is performed on the
12 patient and that is diagnosed or treated by a health care
13 practitioner or at a health care facility and includes:

- 14 (1) shock;
15 (2) uterine perforation;
16 (3) cervical laceration;
17 (4) hemorrhage;
18 (5) aspiration or allergic response;
19 (6) infection;
20 (7) sepsis;
21 (8) death of the patient;
22 (9) incomplete abortion;
23 (10) damage to the uterus; or
24 (11) an infant born alive after the abortion.

1 (b) The reporting requirements of this section apply only
2 to:

3 (1) a physician who performs an abortion at an
4 abortion facility if the abortion results in an abortion
5 complication that is diagnosed or treated by that physician or at
6 the abortion facility; or

7 (2) a health care facility that is a hospital,
8 abortion facility, freestanding emergency medical care facility,
9 or health care facility that provides emergency medical care, as
10 defined by Section 773.003.

11 (c) A physician described by Subsection (b)(1) shall submit
12 to the department in the form and manner prescribed by department
13 rule a report on each abortion complication diagnosed or treated by
14 that physician or at the abortion facility not later than 72 hours
15 after the complication is diagnosed or treated. Each facility
16 described by Subsection (b)(2) shall electronically submit to the
17 department in the form and manner prescribed by department rule a
18 report on each abortion complication diagnosed or treated at the
19 facility not later than the 30th day after the date on which the
20 complication is diagnosed or treatment is provided for the
21 complication.

22 (d) The department shall develop a form for reporting an
23 abortion complication under Subsection (c) and publish the form on
24 the department's Internet website. The executive commissioner by
25 rule may adopt procedures to reduce duplication in reporting under
26 this section.

27 (e) A report under this section may not identify by any

1 means the physician performing an abortion, other than a physician
2 described by Subsection (b)(1), or the patient.

3 (f) A report under this section must identify the name of
4 the physician submitting the report or the name and type of facility
5 submitting the report and must include, if known, for each abortion
6 complication:

7 (1) the date of the abortion that caused or may have
8 caused the complication;

9 (2) the type of abortion that caused or may have caused
10 the complication;

11 (3) the gestational age of the fetus when the abortion
12 was performed;

13 (4) the name and type of the facility in which the
14 abortion was performed;

15 (5) the date the complication was diagnosed or
16 treated;

17 (6) the name and type of any facility other than the
18 reporting facility in which the complication was diagnosed or
19 treated;

20 (7) a description of the complication;

21 (8) the patient's year of birth, race, marital status,
22 and state and county of residence;

23 (9) the date of the first day of the patient's last
24 menstrual period that occurred before the date of the abortion that
25 caused or may have caused the complication;

26 (10) the number of previous live births of the
27 patient; and

1 (11) the number of previous induced abortions of the
2 patient.

3 (g) Except as provided by Section 245.023, all information
4 and records held by the department under this section are
5 confidential and are not open records for the purposes of Chapter
6 552, Government Code. That information may not be released or made
7 public on subpoena or otherwise, except that release may be made:

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

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

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

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

16 (h) A report submitted under this section must meet the
17 federal reporting requirements that mandate the most specific,
18 accurate, and complete coding and reporting for the highest level
19 of specificity.

20 (i) The department shall develop and publish on the
21 department's Internet website an annual report that aggregates on a
22 statewide basis each abortion complication required to be reported
23 under Subsection (f) for the previous calendar year.

24 (j) A physician described by Subsection (b)(1) or facility
25 that violates this section is subject to a civil penalty of \$500 for
26 each violation. The attorney general, at the request of the
27 department or appropriate licensing agency, may file an action to

1 recover a civil penalty assessed under this subsection and may
2 recover attorney's fees and costs incurred in bringing the action.
3 Each day of a continuing violation constitutes a separate ground
4 for recovery.

5 (k) The third separate violation of this section
6 constitutes cause for the revocation or suspension of a physician's
7 or facility's license, permit, registration, certificate, or other
8 authority or for other disciplinary action against the physician or
9 facility by the appropriate licensing agency.

10 (l) The department shall notify the Texas Medical Board of
11 any violations of this section by a physician.

12 SECTION 2. Not later than January 1, 2018:

13 (1) the Department of State Health Services shall
14 develop the forms required by Section 171.006, Health and Safety
15 Code, as added by this Act; and

16 (2) the executive commissioner of the Health and Human
17 Services Commission shall adopt the rules necessary to implement
18 Section 171.006, Health and Safety Code, as added by this Act.

19 SECTION 3. The Department of State Health Services shall
20 establish an electronic reporting system for purposes of Section
21 171.006, Health and Safety Code, as added by this Act, as soon as
22 practicable after the effective date of this Act.

23 SECTION 4. This Act takes effect September 1, 2017.

3rd Reading

FLOOR AMENDMENT NO. 1

BY: Thurman

1 Amend H.B. No. 2962 on third reading in SECTION 1 of the
2 bill, by striking added Section 171.006(b)(1), Health and Safety
3 Code, and substituting the following:

4 (1) a physician at an abortion facility who:

5 (A) performs an abortion at the facility if the
6 abortion results in an abortion complication that is diagnosed
7 or treated by that physician; or

8 (B) diagnoses or treats an abortion complication at
9 the facility that is the result of an abortion performed by
10 another physician at the facility; or

ADOPTED

VV - on 3rd Reading
MAY 24 2017

Lotay Spaw
Secretary of the Senate

ADOPTED

V V
MAY 23 2017

FLOOR AMENDMENT NO. 1

Leta Sawyer
Secretary of the Senate

BY: *Roger Hyman*

1 Amend H.B. No. 2962 (senate committee printing) as follows:

2 (1) In the recital to SECTION 1 of the bill adding Section
3 171.006, Health and Safety Code, strike "Section 171.006" and
4 substitute "Sections 171.006 and 171.007".

5 (2) In SECTION 1 of the bill, in added Section 171.006(c),
6 Health and Safety Code (page 1, line 52), between "shall" and
7 "submit", insert "electronically".

8 (3) In SECTION 1 of the bill, in added Section
9 171.006(f)(10), Health and Safety Code (page 2, line 34),
10 following the underlined semicolon, strike "and".

11 (4) In SECTION 1 of the bill, in added Section
12 171.006(f)(11), Health and Safety Code (page 2, line 36),
13 between "patient" and the underlined period, insert the
14 following:

15 ; and

16 (12) the name of the physician who performed the
17 abortion that resulted in the complication

18 (5) In SECTION 1 of the bill, immediately after added
19 Section 171.006, Health and Safety Code (page 3, between lines 3
20 and 4), insert the following:

21 Sec. 171.007. REPORTING REQUIREMENTS FOR ABORTIONS
22 PERFORMED ON WOMEN YOUNGER THAN 18 YEARS OF AGE. For each
23 abortion performed on a woman who is younger than 18 years of
24 age, the physician who performed the abortion shall document in
25 the woman's medical record and report to the department:

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

28 (A) the woman's parent, managing conservator, or
29 legal guardian has provided the written consent required by

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

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

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

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

13 (i) a condition existed that complicated
14 the medical condition of the woman and necessitated the
15 immediate abortion of the woman's pregnancy to avert the woman's
16 death or to avoid a serious risk of substantial impairment of a
17 major bodily function; and

18 (ii) there was insufficient time to obtain
19 the consent of the woman's parent, managing conservator, or
20 legal guardian;

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

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

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

27 (3) if the woman obtained judicial authorization
28 under Subdivision (1)(B):

29 (A) if applicable, the process the physician or
30 physician's agent used to inform the woman of the availability
31 of petitioning for judicial authorization as an alternative to

1 the written consent required by Section 164.052(a)(19),
2 Occupations Code;

3 (B) whether the court forms were provided to the
4 woman by the physician or the physician's agent; and

5 (C) whether the physician or the physician's
6 agent made arrangements for the woman's court appearance.

7 (6) Add the following appropriately numbered SECTIONS to
8 the bill and renumber SECTIONS of the bill accordingly:

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

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

23 SECTION ____ . Section 171.002, Health and Safety Code, as
24 amended by this Act, and Section 171.007, Health and Safety
25 Code, as added by this Act, apply only to an abortion performed
26 on or after the effective date of this Act. An abortion
27 performed before the effective date of this Act is governed by
28 the law applicable to the abortion immediately before the
29 effective date of this Act, and that law is continued in effect
30 for that purpose.

ADOPTED

✓✓
MAY 23 2017

Henry Board
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY: *BC*

Amend H.B. No. 2962 as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber SECTIONS of the bill accordingly:

SECTION ____ . Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 71A to read as follows:

CHAPTER 71A. PROHIBITED CAUSES OF ACTION

Sec. 71A.001. WRONGFUL BIRTH. (a) A cause of action may not arise, and damages may not be awarded, on behalf of any person, based on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.

(b) This section may not be construed to eliminate any duty of a physician or other health care practitioner under any other applicable law.

SECTION ____ . (a) If some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Texas law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.

(b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state

statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The legislature further declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be

declared unconstitutional or to represent an undue burden.

(c) If any provision of this Act is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force.

(2) On page 15, line 24, between the period and "(a)", insert the following appropriately lettered subsection and reletter subsections of SECTION 9 of the bill accordingly:

(_) Chapter 71A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2962 by Capriglione (Relating to reporting requirements by certain physicians and health care facilities for abortion complications; authorizing a civil penalty.), **As Passed 2nd House**

<p>No significant fiscal implication to the State is anticipated.</p>

The bill would require health care facilities and physicians to report certain abortion complications to the Department of State Health Services (DSHS). The bill would require physicians that perform an abortion on a woman, younger than 18 years old, to report certain information to DSHS regarding the procedure. DSHS would be required to develop a form and an electronic system for reporting abortion complications, following certain criteria, by January 1, 2018. DSHS would be required to develop and publish an annual report that aggregates each abortion complication on a statewide basis. Physicians and facilities that fail to comply with reporting requirements would be subject to a civil penalty of \$500 for each violation and at the request of DSHS, the Attorney General would be permitted to file an action to recover the penalty. Physicians and facilities that commit three separate violations could be subject to disciplinary action or the revoking of their license, permit, registration, certificate, or other authority. DSHS would be required to notify the Texas Medical Board of any violation committed by a physician. The bill would prohibit any cause of action based on a claim that, but for the act or omission of another, a baby would have been aborted. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill by January 1, 2018.

It is assumed the provisions of the bill can be implemented within the existing resources of DSHS, HHSC, the Office of Attorney General, the Office of Court Administration, and any regulatory agency.

Local Government Impact

There could be costs associated with reporting for local hospitals; however, the fiscal impact cannot be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: UP, AG, LR, RGU, JGA, KCA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 17, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2962 by Capriglione (Relating to reporting requirements by certain physicians and health care facilities for abortion complications; authorizing a civil penalty.), **As Engrossed**

<p>No significant fiscal implication to the State is anticipated.</p>

The bill would require health care facilities and physicians to report certain abortion complications to the Department of State Health Services (DSHS). DSHS would be required to develop a form and an electronic system for reporting abortion complications, following certain criteria, by January 1, 2018. DSHS would be required to develop and publish an annual report that aggregates each abortion complication on a statewide basis. Physicians and facilities that fail to comply with reporting requirements would be subject to a civil penalty of \$500 for each violation and at the request of DSHS, the Attorney General would be permitted to file an action to recover the penalty. Physicians and facilities that commit three separate violations could be subject to disciplinary action or the revoking of their license, permit, registration, certificate, or other authority. DSHS would be required to notify the Texas Medical Board of any violation committed by a physician. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill by January 1, 2018.

It is assumed the provisions of the bill can be implemented within the existing resources of DSHS, HHSC, the Office of Attorney General, and any regulatory agency.

Local Government Impact

There could be costs associated with reporting for local hospitals; however, the fiscal impact cannot be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: UP, AG, LR, RGU, JGA, KCA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 24, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2962 by Capriglione (Relating to reporting requirements by certain health care facilities for abortion complications; authorizing a civil penalty.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would require certain health care facilities to report certain abortion complications to the Department of State Health Services (DSHS). DSHS would be required to develop a form for reporting abortion complications, following certain criteria, by January 1, 2018. DSHS would be required to develop and publish an annual report that aggregates each abortion complication on a statewide basis. Facilities that fail to comply with reporting requirements would be subject to a civil penalty of \$500 for each violation and at the request of DSHS, the Attorney General would be permitted to file an action to recover the penalty. DSHS would be permitted to suspend or revoke the license, permit, registration, certificate, or other authority of facilities that commit three separate violations. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill by January 1, 2018.

It is assumed the provisions of the bill can be implemented within the existing resources of DSHS, HHSC, and the Office of Attorney General.

Local Government Impact

There could be costs associated with reporting for local hospitals; however, the fiscal impact cannot be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: UP, AG, LR, RGU, JGA, KCA

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 28, 2017

TO: Honorable Byron Cook, Chair, House Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2962 by Capriglione (Relating to reporting requirements by health care practitioners and certain health care facilities for abortion complications; creating a criminal offense.),
As Introduced

No significant fiscal implication to the State is anticipated.

The bill would require health care facilities and practitioners to report certain abortion complications to the Department of State Health Services (DSHS). DSHS would be required to create forms for reporting abortion complications by January 1, 2018 and maintain submitted forms. DSHS would be permitted to suspend or revoke the licenses of facilities that do not comply with the reporting requirements. Practitioners who fail to comply with reporting requirements would be subject to a Class A misdemeanor and disciplinary action or the revoking of their license, permit, registration, certificate, or other authority. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill by January 1, 2018.

It is assumed the provisions of the bill can be implemented within the existing resources of DSHS, HHSC, and any regulatory agency.

Local Government Impact

A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

There could be costs associated with reporting for local hospitals; however, the fiscal impact cannot be determined at this time.

Source Agencies: 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of

LBB Staff: UP, AG, LR, RGU, EK, JGA