

**House Bill 2962**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

No equivalent provision.

SECTION \_\_. 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 that 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. [FA1(6)]

No equivalent provision.

SECTION \_\_. Section 171.002, Health and Safety Code, as amended by this Act, and Section 171.007, Health and Safety Code, as added by this Act, apply only to an abortion performed on or after the effective date of this Act. An abortion performed before the effective date of this Act 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. [FA1(6)]

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

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CIVIL PENALTY. (a) In this section "abortion complication" means any harmful event or adverse

SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Sections 171.006 and 171.007 to read as follows: [FA1(1)]

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CIVIL PENALTY. (a) In this section "abortion complication" means any harmful event or adverse

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outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

- (1) shock;
- (2) uterine perforation;
- (3) cervical laceration;
- (4) hemorrhage;
- (5) aspiration or allergic response;
- (6) infection;
- (7) sepsis;
- (8) death of the patient;
- (9) incomplete abortion;
- (10) damage to the uterus; or
- (11) an infant born alive after the abortion.

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

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

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

(c) A physician described by Subsection (b)(1) shall submit to the department in the form and manner prescribed by department rule a report on each abortion complication diagnosed or treated by that physician or at the abortion facility not later than 72 hours after the complication is

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outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

- (1) shock;
- (2) uterine perforation;
- (3) cervical laceration;
- (4) hemorrhage;
- (5) aspiration or allergic response;
- (6) infection;
- (7) sepsis;
- (8) death of the patient;
- (9) incomplete abortion;
- (10) damage to the uterus; or
- (11) an infant born alive after the abortion.

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

(1) a physician at an abortion facility who:

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

(B) diagnosis or treats an abortion complication at the facility that is the result of an abortion performed by another physician at the facility; or [FA1,3rd]

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

(c) A physician described by Subsection (b)(1) shall electronically submit to the department in the form and manner prescribed by department rule a report on each abortion complication diagnosed or treated by that physician or at the abortion facility not later than 72 hours after the

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diagnosed or treated. Each facility described by Subsection (b)(2) shall electronically submit to the department in the form and manner prescribed by department rule a report on each abortion complication diagnosed or treated at the facility not later than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication.

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

(e) A report under this section may not identify by any means the physician performing an abortion, other than a physician described by Subsection (b)(1), or the patient.

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

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

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

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

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

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

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

(7) a description of the complication;

(8) the patient's year of birth, race, marital status, and state

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complication is diagnosed or treated. Each facility described by Subsection (b)(2) shall electronically submit to the department in the form and manner prescribed by department rule a report on each abortion complication diagnosed or treated at the facility not later than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication. [FA1(2)]

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

(e) A report under this section may not identify by any means the physician performing an abortion, other than a physician described by Subsection (b)(1), or the patient.

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

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

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

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

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

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

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

(7) a description of the complication;

(8) the patient's year of birth, race, marital status, and state

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and county of residence;

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

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

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

(g) Except as provided by Section 245.023, all information and records held by the department 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 that release may be made:

(1) for statistical purposes, but only if a person, patient, or 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.

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

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

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and county of residence;

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

(10) the number of previous live births of the patient;  
[FA1(3)]

(11) the number of previous induced abortions of the patient;  
and

(12) the name of the physician who performed the abortion that resulted in the complication. [FA1(4)]

(g) Except as provided by Section 245.023, all information and records held by the department 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 that release may be made:

(1) for statistical purposes, but only if a person, patient, or 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.

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

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

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(j) A physician described by Subsection (b)(1) or facility that violates this section is subject to a civil penalty of \$500 for each violation. The attorney general, at the request of the department or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

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

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

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(j) A physician described by Subsection (b)(1) or facility that violates this section is subject to a civil penalty of \$500 for each violation. The attorney general, at the request of the department or appropriate licensing agency, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

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

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

Sec. 171.007. 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 each abortion:

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

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

(C) the woman has provided consent 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

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Code, or without judicial authorization under Section 33.003 or 33.004, Family Code; or  
(D) the physician has 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 written consent under Subdivision (1)(A), whether the consent was given:  
(A) in person at the time of the abortion; or  
(B) at a place other than the location where the abortion was performed; and  
(3) if the woman obtained judicial authorization under 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. [FA1(5)]

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SECTION 2. Not later than January 1, 2018:

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

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

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

No equivalent provision.

No equivalent provision.

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SECTION 2. Same as House version.

SECTION 3. Same as House version.

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. [FA3]

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

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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



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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. [FA3]

(\_) 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. [FA3]

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

SECTION 4. Same as House version.