

By: Perry

S.B. No. 36

A BILL TO BE ENTITLED

1 AN ACT
2 relating to abortion reporting and exemptions to abortion facility
3 licensing.

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

5 SECTION 1. Section 245.004, Health and Safety Code, as
6 amended by Chapters 198 (H.B. 2292) and 999 (H.B. 15), Acts of the
7 78th Legislature, Regular Session, 2003, is reenacted and amended
8 to read as follows:

9 Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a)
10 The following facilities need not be licensed under this chapter:

11 (1) a hospital licensed under Chapter 241 (Texas
12 Hospital Licensing Law); ~~[or]~~

13 (2) the office of a physician licensed under Subtitle
14 B, Title 3, Occupations Code, unless the office is used
15 substantially for the purpose of performing ~~[more than 50]~~
16 abortions; or

17 (3) an ambulatory surgical center licensed under
18 Chapter 243.

19 (b) For purposes of this section, a facility is used
20 substantially for the purpose of performing abortions if the
21 facility:

22 (1) is a provider for performing:

23 (A) at least five ~~[10]~~ abortion procedures during
24 any month; or

1 (B) at least 50 [~~100~~] abortion procedures in a
2 12-month period [~~year~~];

3 (2) operates less than 20 days in a month and the
4 facility, in any month, is a provider for performing a number of
5 abortion procedures that would be equivalent to at least five [~~10~~]
6 procedures in a month if the facility were operating at least 20
7 days in a month;

8 (3) holds itself out to the public as an abortion
9 provider by advertising by any public means, including advertising
10 placed in a newspaper, telephone directory, magazine, or electronic
11 medium, that the facility performs abortions; or

12 (4) applies for an abortion facility license.

13 (b-1) In computing the number of abortions performed for
14 purposes of Subsections (b)(1) and (2), an abortion performed in
15 accordance with Section 245.016 is not included.

16 (c) For purposes of this section, an abortion facility is
17 operating if the facility is open for any period of time during a
18 day and has on site at the facility or on call a physician available
19 to perform abortions.

20 SECTION 2. Section [245.011\(c\)](#), Health and Safety Code, as
21 effective September 1, 2021, is amended to read as follows:

22 (c) The report must include:

23 (1) whether the abortion facility at which the
24 abortion is performed is licensed under this chapter;

25 (2) the patient's year of birth, race, marital status,
26 and state and county of residence;

27 (3) the type of abortion procedure performed;

- 1 (4) the date the abortion was performed;
- 2 (5) whether the patient survived the abortion, and if
3 the patient did not survive, the cause of death;
- 4 (6) the probable post-fertilization age of the unborn
5 child based on the best medical judgment of the attending physician
6 at the time of the procedure;
- 7 (7) the date, if known, of the patient's last menstrual
8 cycle;
- 9 (8) the number of previous live births of the patient;
- 10 (9) the number of previous induced abortions of the
11 patient;
- 12 (10) whether the abortion was performed or induced
13 because of a medical emergency and any medical condition of the
14 pregnant woman that required the abortion; ~~and~~
- 15 (11) the county in which the abortion was performed;
16 and
- 17 (12) the information required under Sections
18 [171.008](#)(a) and (c).

19 SECTION 3. Section [245.002](#), Health and Safety Code, is
20 amended by adding Subdivision (3) to read as follows:

21 (3) "Commission" means the Health and Human Services
22 Commission.

23 SECTION 4. Section [245.0116](#), Health and Safety Code, is
24 amended to read as follows:

25 Sec. 245.0116. COMMISSION ~~[DEPARTMENT]~~ REPORT. (a) The
26 commission ~~[department]~~ shall publish on its Internet website a
27 monthly report containing aggregate data of the information in the

1 reports submitted under Section 245.011. The report must specify
2 the number of abortions performed in each county during the
3 reporting period.

4 (b) The commission's [~~department's~~] monthly report may not
5 identify by any means an abortion facility, a physician performing
6 the abortion, or a patient.

7 SECTION 5. Section 164.052(a), Occupations Code, as
8 effective September 1, 2021, is amended to read as follows:

9 (a) A physician or an applicant for a license to practice
10 medicine commits a prohibited practice if that person:

11 (1) submits to the board a false or misleading
12 statement, document, or certificate in an application for a
13 license;

14 (2) presents to the board a license, certificate, or
15 diploma that was illegally or fraudulently obtained;

16 (3) commits fraud or deception in taking or passing an
17 examination;

18 (4) uses alcohol or drugs in an intemperate manner
19 that, in the board's opinion, could endanger a patient's life;

20 (5) commits unprofessional or dishonorable conduct
21 that is likely to deceive or defraud the public, as provided by
22 Section 164.053, or injure the public;

23 (6) uses an advertising statement that is false,
24 misleading, or deceptive;

25 (7) advertises professional superiority or the
26 performance of professional service in a superior manner if that
27 advertising is not readily subject to verification;

1 (8) purchases, sells, barters, or uses, or offers to
2 purchase, sell, barter, or use, a medical degree, license,
3 certificate, or diploma, or a transcript of a license, certificate,
4 or diploma in or incident to an application to the board for a
5 license to practice medicine;

6 (9) alters, with fraudulent intent, a medical license,
7 certificate, or diploma, or a transcript of a medical license,
8 certificate, or diploma;

9 (10) uses a medical license, certificate, or diploma,
10 or a transcript of a medical license, certificate, or diploma that
11 has been:

12 (A) fraudulently purchased or issued;

13 (B) counterfeited; or

14 (C) materially altered;

15 (11) impersonates or acts as proxy for another person
16 in an examination required by this subtitle for a medical license;

17 (12) engages in conduct that subverts or attempts to
18 subvert an examination process required by this subtitle for a
19 medical license;

20 (13) impersonates a physician or permits another to
21 use the person's license or certificate to practice medicine in
22 this state;

23 (14) directly or indirectly employs a person whose
24 license to practice medicine has been suspended, canceled, or
25 revoked;

26 (15) associates in the practice of medicine with a
27 person:

1 (A) whose license to practice medicine has been
2 suspended, canceled, or revoked; or

3 (B) who has been convicted of the unlawful
4 practice of medicine in this state or elsewhere;

5 (16) performs or procures a criminal abortion, aids or
6 abets in the procuring of a criminal abortion, attempts to perform
7 or procure a criminal abortion, or attempts to aid or abet the
8 performance or procurement of a criminal abortion;

9 (17) directly or indirectly aids or abets the practice
10 of medicine by a person, partnership, association, or corporation
11 that is not licensed to practice medicine by the board;

12 (18) performs an abortion on a woman who is pregnant
13 with a viable unborn child during the third trimester of the
14 pregnancy unless:

15 (A) the abortion is necessary to prevent the
16 death of the woman;

17 (B) the viable unborn child has a severe,
18 irreversible brain impairment; or

19 (C) the woman is diagnosed with a significant
20 likelihood of suffering imminent severe, irreversible brain damage
21 or imminent severe, irreversible paralysis;

22 (19) performs an abortion on an unemancipated minor
23 without the written consent of the child's parent, managing
24 conservator, or legal guardian or without a court order, as
25 provided by Section 33.003 or 33.004, Family Code, unless the
26 abortion is necessary due to a medical emergency, as defined by
27 Section 171.002, Health and Safety Code;

1 (20) otherwise performs an abortion on an
2 unemancipated minor in violation of Chapter 33, Family Code;

3 (21) performs or induces or attempts to perform or
4 induce an abortion in violation of Subchapter C, F, or G, Chapter
5 171, Health and Safety Code;

6 (22) in complying with the procedures outlined in
7 Sections 166.045 and 166.046, Health and Safety Code, wilfully
8 fails to make a reasonable effort to transfer a patient to a
9 physician who is willing to comply with a directive; ~~or~~

10 (23) performs or delegates to another individual the
11 performance of a pelvic examination on an anesthetized or
12 unconscious patient in violation of Section 167A.002, Health and
13 Safety Code; or

14 (24) fails to submit a report required by Section
15 245.011, Health and Safety Code.

16 SECTION 6. The changes in law made by this Act apply only to
17 an abortion performed on or after the effective date of this Act.

18 SECTION 7. This Act takes effect January 1, 2022.