

SUBJECT: Collecting information related to the performance of an abortion

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 7 ayes — Swinford, Paxton, Van Arsdale, Christian, B. Cook, Flynn, Parker

1 nay — Veasey

1 absent — Farrar

SENATE VOTE: On final passage, April 26 — 20-10 (Ellis, Gallegos, Hinojosa, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, Whitmire, Zaffirini)

WITNESSES: (*On House companion bill, HB 1750 by Morrison:*)  
For — Rhonda Arias, Oil of Joy; Tama Chunn, Life Advocates; Lisa Dudley, Operation Outcry, The Justice Foundation; Myra J. Myers, Operation Outcry; Stacey Emick, Texas Right to Life; Linda W. Flower, Texas Physicians Resource Council; Shawna Kimbrough; Belen Lopez, Covenant Church – Mundo de Fe; Christine Melchor; Anne Newman, Clayton Trotter, The Justice Foundation; Helen Posvar, Houston Coalition for Life; Brandi Powell, Taking Back Ground Ministries; Andrew Rivas, Texas Catholic Conference; Jonathan Saenz, Free Market Foundation; Becky Turner; Melissa Webb, Oil of Joy for Mourning; (*Registered, but did not testify:* Cathie Adams, Texas Eagle Forum; Maria Mayela Banks, Operation Outcry; Brent Connett, Texas Conservative Coalition; Julie Drenner, Texans for Family Values PAC; MerryLynn Gerstenschlager, Texas Eagle Forum Education Liaison; Erin Hurt, Texas Right to Life; Dawn Jackson and Michele Lee, Operation Outcry; Veronica Millare, Life Advocates; Beverly B. Nuckols, Alliance for Life, Inc.; Joe Pojman, Texas Alliance for Life, Inc.; Angelica Rosales, House of Hope-Pregnancy Resource Center; Linda Schlueter, The Justice Foundation; Bishop Kevin W. Vann, The Texas Catholic Conference, The Roman Catholic Bishops of Texas; Terry Williams, Central Texas Life Care; Kyleen Wright, Texans for Life; and 17 individuals)

Against — Bill Crowden, Planned Parenthood of Waco; Laurie Jones Felker, NARAL Pro-Choice Texas; Ishrat Kundawaza; Hannah Riddering,

Austin N.O.W.; Genevieve Van Cleve; Katie Vitale, National Organization for Women; Margaret R. Walsh; (*Registered but did not testify*: Elizabeth Brenner, Texas Association of Planned Parenthood Affiliates; Sara Cleveland, NARAL Pro-Choice Texas; Mary Finch, The League of Women Voters of Texas; Juliana Gonzales, Whole Woman's Health; Yvonne Gutierrez, Business and Professional Women of Texas; Margaret F. Hotze, The Life Advocates; Mike Hull, Texas Association of Obstetricians and Gynecologists; Mike Hull, Texas Medical Association; Heather Paffe, Texas Association of Planned Parenthood Affiliates; Joanne Richards, Lilith Fund; Katie Tastrom, National Association of Social Workers-Texas; Shane M. Trawick, ACLU of Texas; and 16 individuals)

On — Nance Stearman, Department of State Health Services

**BACKGROUND:** The Texas Abortion Facility Reporting and Licensing Act was enacted in 1985. Under the act, each abortion facility is required to submit an annual report to the Department of State Health Services (DSHS) on each abortion performed. The report must be submitted on a form provided by DSHS and include:

- whether the abortion facility is properly licensed by the under the Texas Hospital Licensing Law;
- the patient's year of birth, race, marital status, and state and county of residence;
- the type of abortion procedure;
- the date the abortion was performed;
- whether the patient survived the abortion, and if not, including the cause of death;
- the period of gestation at the time of the procedure, based on the medical judgment of the attending physician;
- the date, if known, of the patient's last menstrual cycle;
- the number of previous live births of the patient; and
- the number of previous induced abortions of the patient.

The report may not identify by any means the physician performing the abortion or the identity of the patient. All records held by DSHS under the act are confidential and not considered open records.

A person commits a misdemeanor offense punishable by up to one year in jail or a maximum fine of \$4,000 if found in violation of the reporting requirements established by the act.

Under Family Code, ch. 33, requires a physician to notify the parent, guardian, or managing conservator of a minor seeking an abortion 48 hours in advance. The minor may seek to obtain a “judicial bypass” in any county court at law, probate court, or district court allowing her to consent to the abortion without parental notification. An order denying the judicial bypass is appealable to the court of appeals and the Texas Supreme Court.

**DIGEST:**

CSSB 785 would add reporting requirements for physicians performing abortions, which would include:

- the name of the abortion facility, including the municipality and county where the facility is located;
- the signature and license number of the physician performing the abortion;
- the patient’s age;
- the patient’s municipality and nation of residence;
- the age of the father of the unborn child;
- the patient's reason for choosing to abort the child, if provided;
- the weight of the fetus at the time of the procedure;
- the method of pregnancy verification;
- the number of previous miscarriages;
- whether the abortion was paid for by private insurance, a public health plan, or personal payment by patient;
- whether or not the patient had insurance coverage, and if so what type;
- the fee collected for the procedure;
- the source of referral for the abortion;
- the type of anesthetic, if any, used during the procedure;
- the method used to dispose the fetal tissue and remains;
- complications, if any, and;
- whether the patient availed herself of the chance to review information materials by DSHS on abortion before the procedure.

If the patient were a minor, the report also would include:

- whether a parent or guardian gave written consent required by law;
- whether the physician concluded that, in the physician's judgment, a condition existed that complicated the minor's medical condition and necessitated immediate abortion to avert her death or avoid serious risk of substantial impairment of a major bodily function and that there was insufficient time to obtain consent of the minor's parent or guardian;
- whether the minor was emancipated; and
- whether judicial authorization was received, and if so, how the physician informed the patient of the judicial bypass and what entity made the court arrangement for the minor.

The requirement that the patient complete specific parts of the reporting form requesting the patient's personal information could be waived if the abortion was performed to prevent the death of the patient, there was a significant likelihood of imminent severe, irreversible brain damage or paralysis, or the unborn child had severe, irreversible brain impairment.

If a patient indicated she was being forced to undergo an abortion procedure, the physician would have to take all reasonable efforts to ensure the woman was not being forced and report any abuse or neglect to proper authorities. DSHS would require abortion providers to maintain a list of domestic violence shelters and assistance programs and provide necessary referrals if a woman communicated she was being abused or being forced to have an abortion.

The bill would require DSHS to prepare an abortion complication reporting form, to be completed by a physician who treated an illness or injury related to abortion complication, and submit the form to DSHS. The reporting requirements would be similar to those of the abortion reporting form.

Copies of both the abortion reporting and abortion complication forms would be maintained in the patient's medical file for not less than seven years, and the patient would receive copies once the forms were completed.

A physician performing an abortion would be required to complete and submit an abortion reporting form no later than the 15th day of each month for abortions performed during the previous calendar month and to

submit abortion complication forms as soon as practicable after treatment, but no later than seven days after treatment.

DSHS would issue an aggregate public report no later than April 1 of each year summarizing the information submitted on individual reports of abortion providers. The report would cover the previous calendar year and would provide information on all previous calendar years, adjusting for late or corrected reports. DSHS would ensure that none of the information contained in the public report could reasonably lead to the identification of a physician who performed an abortion or a woman who had an abortion, including treatment for related complications. Information contained in the report would be confidential and not subject to the Public Information Act.

**Penalties.** Physicians who did not submit reports within 30 days of the statutory filing deadline would be subject to a late fee of \$500 for each additional 30-day period the report was overdue. If a physician did not submit individual reports before the first anniversary of the date the report was due, DSHS could file an action to have a court direct the physician to submit the reports or be subject to sanctions for civil contempt.

An offense for failing to submit a required form or report or for intentionally, knowingly or recklessly submitting false information, among other actions under the bill, would constitute a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

If DSHS failed to issue an annual public report or failed to enforce reporting requirements, a group of 10 more citizens of the state could petition a court for an injunction against the executive commissioner of the Health and Humans Services Commission to produce the report. Failure to comply with an injunction would subject the executive commissioner to sanctions for civil contempt.

**Statistics on judicial bypass.** The bill also would direct the Texas Supreme Court to adopt rules governing the collection of statistical information on applications and appeals by judges providing minors with authorization to undergo an abortion procedure without parental notification. Information collected would be made available to the public in aggregate form by county. The published reports would have to be produced in a manner that could not reasonably lead to the identification of the minor.

**Deadlines and effective date.** By December 1, 2007, the Texas Supreme Court would be required to adopt necessary rules for the collection of judicial bypass data, and DSHS would be required provide reporting forms for distribution to physicians by the Texas Medical Board. A physician would not be required to submit a form under the bill before January 1, 2008.

The changes law in law made by the bill would only apply to an offense committed on or after January 1, 2008.

This bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

CSSB 785 is designed to produce better information about abortions in order to craft better public policy. DSHS already requires the reporting of some general information on abortion statistics. However, current reporting does not provide the broad range of accurate, reliable data needed. Strengthening reporting requirements also would provide insight into the circumstances leading women to seek abortions and would assist maternal health groups in directing their outreach efforts.

The U.S. Supreme Court has held that, "[R]ecordkeeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible....The collection of information with respect to actual patients is a vital element of medical research, and so it cannot be said that the requirements serve no purpose other than to make abortions more difficult. Nor do we find that the requirements impose a substantial obstacle to a woman's choice," *Planned Parenthood of Southeastern PA v. Casey*, 505 U.S. 833, 901 (1992).

The bill would not require collection of information that is not already required by other states. Seven states with similar reporting provisions ask for specific reasons a woman has chosen to undergo an abortion, and 17 states require reporting on abortion complications. There currently is no process for reporting abortion complications in the state of Texas. In considering women's safety, the benefits would outweigh the burden of additional reporting measures. Current law requires that physicians report data on abortions, and CSSB 785 only would expand the types of information collected.

Collecting information on judicial bypasses granted to minors would

benefit the Legislature in assessing the efficacy and frequency of the parental notification provision. The bill only would require the reporting of raw data and would not single out the woman or judge's identifying information. The bill would charge the Texas Supreme Court with adopting rules for judicial bypass reporting, and lawmakers should trust that the court would create rules that would protect their judicial colleagues.

OPPONENTS  
SAY:

CSSB 785 would burden patients, target elected judges, and make public an experience that should be respected as private and confidential, while doing nothing to improve public health. Current law already requires the collection and reporting of information to monitor public health and track abortion procedures without violating a patient's right to confidentiality and privacy. The reporting proposed by the bill would be vastly more detailed and burdensome to both the patient and the physician. When compared to the public data collection on other elective procedures - vasectomy, hysterectomy, and breast reduction, for example - this proposed reporting would be radically more stringent and invasive.

The bill would be exceptional in its reporting requirements, potentially imposing the reporting of more than 35 specific items. Physicians estimate that compliance would require at least 20 minutes per patient, time that is lost to treating patients and that is uncompensated. Larger facilities could also face the need to hire additional staff to meet monthly, cumulative reporting requirements. With 93 percent of the state's counties lacking an abortion provider, many women must travel to receive abortion care and then seek follow-up care with local, hometown physicians. About 77,000 Texas women receive abortions annually. Physicians across the state consequently would be unduly burdened by the additional reporting for both the actual procedure and any related care for complications. As a result, some physicians could be discouraged from offering vital abortion and follow-up care due to the administrative and legal liabilities involved.

The bill would provide no compelling justification with respect to maternal health for collecting statistical data on judicial bypass cases, and it could jeopardize the confidentiality and safety of judges. Requiring reporting by county on judicial bypass cases effectively would identify the judges hearing the cases. Of 254 counties in Texas, 100 counties have one district judge and a number of counties have just two district judges. The Office of Court Administration reported that the state had more than 4,000 security incidents in courtrooms and chambers between September 2004

and August 2005. Judges would be vulnerable to possible backlash from members of the public learning of a court that authorized a judicial bypass. Judges fearing retribution for both personal safety and political reasons would not be able to perform adequately the considerable responsibilities of their office. Threats of violence or intimidation not only compromise the safety of a judicial officer, but also the independence of the judiciary.

**NOTES:**

The House committee substitute added to the Senate-passed version of the bill the requirement that abortion providers maintain a list of domestic violence shelters and assistance programs to which physicians must provide referrals if a woman communicates she is being abused or forced to have an abortion.

The substitute changed the reporting forms to request the patient's nation of residence, the county of the abortion facility, the father's age, detailed answer options as to why the patient was choosing to undergo an abortion, how the patient paid for the abortion service and whether insurance coverage subsidized the cost, the fee paid for the service, and whether the woman availed herself of DSHS materials before an abortion.

The committee substitute would make it a requirement for the patient to fill out the parts of the form requesting the patient's personal information, while providing for a waiver for the patient under certain circumstances. It also removed a requirement that the cumulative reporting be accompanied by a cover sheet indicating the monthly total of abortions performed by the facility.

The substitute would provide that a physician could be subject to late fees for failing to submit a report, a change from the Senate version that would provide that a physician who "intentionally or knowingly" failed to submit a report could be subject to late fees.

The substitute would provide that "a person" commits an offense for failing to submit a report or for knowingly or recklessly submitting false information, while the Senate version would provide that "a person other than the patient" could commit an offense.

The substitute would increase the penalty for a violation under the bill from a class C misdemeanor to a class A misdemeanor.

The substitute would require that judicial bypass data be aggregated by



county rather than statewide. It also added the provision that an entity collecting the data would have to ensure that the information included in public reports could not reasonably lead to the identification of a minor, rather than the identification of an individual female or judge.

According to the fiscal note, CSSB 785 would cost \$752,387 in fiscal 2008-09. Costs are attributed to DSHS include additional FTEs (\$153,423), the printing and distribution of reporting forms by the Texas Medical Board (\$44,600), and the additional software technology needed at the onset to track the reports submitted to DSHS (\$319,790).

The House companion bill, HB 1750 by Morrison, failed by 4 ayes, 2 nays, 3 absent, to receive a sufficient majority to be reported by the State Affairs Committee on April 18.