

BILL ANALYSIS

Senate Research Center

S.B. 407
By: Harris
Health & Human Services
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As Filed

DIGEST

Currently, Chapter 245 of the Health and Safety Code governs the regulation of abortion facilities by the Texas Department of Health (department). The department lacks the authority to impose administrative penalties and revoke or suspend licenses in emergency situations under this chapter. The department has such authority in its regulation over other health-oriented facilities. This bill would modify the minimum standards for abortion facilities; authorize the release of information and records by the department to appropriate state licensing boards; and provide for the immediate suspension or revocation by the department of a person's license. Further, it provides for administrative penalties, administrative hearings, judicial review of such hearings, enforcement of sanctions imposed by Chapter 245, and cost recovery arising from such enforcement by the department and the attorney general.

PURPOSE

As proposed, S.B. 407 modifies the minimum standards required for abortion facilities, authorizes the release of information and records by the Texas Department of Health to appropriate state licensing boards, and sets forth the guidelines for the immediate suspension or revocation by the department of a person's license to operate an abortion facility. The bill also provides for administrative penalties, administrative hearings, judicial review of such hearings, enforcement of sanctions, and cost recovery arising from such enforcement.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 245.010(c), Health and Safety Code, to prohibit standards for abortion facilities from being more stringent than Medicare certification standards, if any, for medical treatment and medical services provided by an abortion facility and the coordination of treatment and services, including quality assurance; and the management, ownership, and control of an abortion facility. Makes a conforming change.

SECTION 2. Amends Section 245.011(d), Health and Safety Code, to prohibit information and records held by the Texas Department of Health (department), relating to abortion facilities, from being released or made public on subpoena or otherwise, unless the release, among other exceptions, is made to appropriate state licensing boards to enforce state licensing laws. Makes conforming changes.

SECTION 3. Amends Section 245.012(c), Health and Safety Code, to set forth the guidelines authorizing the department to immediately suspend or revoke a license of an abortion facility when the health and safety of persons are threatened.

SECTION 4. Amends Chapter 245, Health and Safety Code, by adding Sections 245.017-245.022, as follows:

Sec. 245.017. ADMINISTRATIVE PENALTY. Sets forth the guidelines authorizing the board to impose administrative penalties for violations of this chapter or rules adopted under

this chapter. Provides that all administrative penalty proceedings are subject to Section 2001, Government Code.

Sec. 245.018. **REPORT RECOMMENDING ADMINISTRATIVE PENALTY.** Sets forth the guidelines requiring the department to give notice of a report recommending an administrative penalty. Authorizes the person notified by the department to either accept the determination of the department or make a written request for a hearing on that determination. If the notified person accepts the department's determination, the commissioner of public health or the commissioner's designee is required to issue an order approving the determination and ordering the person to pay the recommended penalty.

Sec. 245.019. **HEARING; ORDER.** If the notified person requests a hearing, the commissioner of public health or the commissioner's designee is required to set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing. Requires the hearings examiner to make findings of fact and conclusions of law and promptly issue to the commissioner a proposal for a decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted. Authorizes the commissioner by order to find that a violation has occurred and assess a penalty or find that no violation has occurred based on the findings and recommendations of the hearings examiner.

Sec. 245.020. **NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND.** Sets forth the guidelines and conditions for required notice by the commissioner of public health or the commissioner's designee for an order issued by the commissioner. Sets forth the options a person subject to such an order is authorized to take. Sets forth the guidelines for stay of enforcement of the penalty by payment, supersedeas bond, or sworn affidavit of financial inability by the person subject to the order. Sets forth the guidelines for contesting a sworn affidavit of financial inability. Authorizes the department to refer the matter to the attorney general for collection of the amount of the penalty if the person does not pay the amount of the penalty and if the enforcement is not stayed. Sets forth the guidelines for appeal of the commissioner's order. Sets forth the options the court is authorized to take in review of the order. Sets forth the guidelines the court is required to follow for post-judgment proceedings upon the judgment of the court becoming final.

Sec. 245.021. **PENALTY DEPOSITED TO STATE TREASURY.** Requires a penalty collected under this chapter to be deposited in the state treasury to the credit of the general revenue fund.

Sec. 245.022. **RECOVERY OF COSTS.** Sets forth the guidelines authorizing the department to recover costs arising from an administrative hearing. Sets forth the guidelines authorizing the attorney general to recover costs arising from enforcement of an injunction or civil and/or administrative penalties arising under this chapter. Defines "reasonable expenses and costs."

SECTION 5. Effective date: September 1, 1997.

SECTION 6. Emergency clause.