

## **BILL ANALYSIS**

Senate Research Center  
78R455 JTS-F

S.B. 835  
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State Affairs  
4/16/2003  
As Filed

### **DIGEST AND PURPOSE**

As proposed, S.B. 835 regulates abortion and abortion providers. It requires abortions performed at or after the 16th week of pregnancy to be performed in a licensed hospital or ambulatory surgical center; requires certain information and materials, including full-color representation of gestating fetuses, information about pregnancy and adoption agencies and available services, and information about contraception, to be supplied and/or offered to a woman seeking an abortion; requires a 24-hour wait after receiving the information before the abortion can occur; and creates an offense for a physician who intentionally violates this subchapter. S.B. 835 also lowers the number of abortions that can be performed in a facility without the facility being licensed as an abortion provider and prohibits the location of an abortion facility within 1,500 feet of a church or school.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 1 (Section 171.014, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 171, as follows:

#### CHAPTER 171. ABORTION

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. DEFINITION. Defines "abortion."

Sec. 171.002. PHYSICIAN TO PERFORM. Provides that an abortion may only be performed by a physician licensed to practice medicine in this state.

Sec. 171.003. ABORTION OF FETUS AGE 16 WEEKS OR MORE. Provides that an abortion of a fetus age 16 weeks or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion.

Sec. 171.004. DEPARTMENT TO ENFORCE. Requires the Texas Department of Health (TDH) to enforce this chapter.

[Reserves Sections 171.005-171.010 for expansion.]

##### SUBCHAPTER B. INFORMED CONSENT

Sec. 171.011. INFORMED CONSENT REQUIRED. Prohibits a person from performing an abortion without the voluntary and informed consent of the woman on whom the abortion is to be performed.

Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Sets forth the parameters of voluntary and informed consent for abortion.

(b) Requires the information required to be provided under Subsections (a)(1) and (2) to be provided orally by telephone or in person, and at least 24 hours prior to the time the abortion is to be performed.

(c) Requires the physician or the physician's agent, when providing the information under Subsection (a)(2)(D), to provide the woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) Requires the physician or physician's agent, if the woman chooses to view the materials described by Section 171.014, to furnish copies of the materials to her at least 24 hours before the abortion is to be performed. Authorizes the physician or agent to furnish the materials to the woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

(b) Provides that, except as provided by Section 171.017, a physician or agent is not required to furnish copies of the materials if the woman provides the physician with a written statement that she chooses to view the materials on the Internet website sponsored by TDH.

(c) Authorizes the physician or agent to disassociate themselves from the materials and to choose to comment on the materials or refrain from commenting.

Sec. 171.014. INFORMATIONAL MATERIALS. (a) Requires TDH to publish informational materials that include certain elements.

(b) Requires the materials to be published in a certain manner.

(c) Requires the materials to be available at no cost from TDH on request. Requires TDH to provide appropriate quantities of the materials to any person.

(d) Requires TDH to annually review the materials to determine if changes to the contents of the materials are necessary. Requires TDH to adopt rules necessary for considering and making changes to the materials.

(e) Requires TDH to develop and maintain an Internet website to display the information required to be published under this section. Requires TDH, in developing and maintaining the website, to the extent reasonably practicable, to safeguard the website against alterations by anyone other than TDH and to monitor the website each day to prevent and correct tampering. Requires TDH to ensure that the website does not collect or maintain information regarding access to the website.

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. Requires the materials to include either geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, childbirth, and the child's dependency, including certain elements, or a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies that are located near the caller and of the services offered by the agencies.

Sec. 171.016. INFORMATION RELATING TO CHARACTERISTICS OF UNBORN CHILD. (a) Requires the informational materials to include materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival.

(b) Requires the materials to include color pictures representing the development of the child at two-week gestational increments. Requires the pictures to contain the dimensions of the unborn child and to be realistic.

(c) Requires the materials under this section to be objective and nonjudgmental and be designed to convey only accurate scientific information about the unborn child at the various gestational ages.

Sec. 171.017. INFORMATION RELATING TO PREVENTION OF PREGNANCY. (a) Requires the informational materials to include materials that are designed to inform the woman of pregnancy prevention methods for females and males and that describe each method in detail, and include pictures or diagrams that illustrate the proper use of each method.

(b) Requires the physician who is to perform the abortion, the referring physician, or the agent of either physician to provide a woman requesting an abortion with the materials published under this section, without regard to whether the woman chooses to view the informational materials under Section 171.012(a)(2)(D).

Sec. 171.018. PERIODS RUN CONCURRENTLY. Provides that if the woman is an unemancipated minor subject to Chapter 33 (Notice of Abortion), Family Code, the 24-hour periods established under Sections 171.012(b) and 171.013(a) may run concurrently with the period during which actual or constructive notice is provided under Section 33.002 (Parental Notice), Family Code.

Sec. 171.019. OFFENSE. Provides that a physician who intentionally performs an abortion on a woman in violation of this subchapter commits an offense. Provides that an offense under this section is a misdemeanor punishable by a fine not to exceed \$10,000. Defines “intentionally.”

SECTION 2. Amends Section 245.004, Health and Safety Code, as follows:

(a) Provides that the office of a physician licensed under Subtitle B, Title 3, Occupations Code, that is used substantially for the purpose of performing abortions, rather than used for the purpose of performing more than 300 abortions in any 12-month period, is not exempted from the licensing requirement under this chapter.

(b) Provides that for purposes of this section, a facility is used substantially for the purpose of performing abortions if the facility: is a provider for performing at least 10 abortions during any month or at least 100 abortions in a year; operates less than 20 days in a month and the facility, in any month, is a provider for performing a number of abortion procedures that would be equivalent to at least 10 procedures in a month if the facility were operating at least 20 days in a month; holds itself out to the public as an abortion provider by advertising by any public means, including advertising placed in a newspaper, telephone director, magazine, or electronic medium, that the facility performs abortions; or applies for an abortion facility license.

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

Deletes the existing text of Subsection (b), regarding the computation of the number of abortions performed in the office of a physician.

SECTION 3. Amends Section 245.010(a), Health and Safety Code, to require the rules to contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171.

SECTION 4. Amends Chapter 245, Health and Safety Code, by adding Section 245.0104, as follows:

Sec. 245.0104. LOCATION OF ABORTION FACILITY. (a) Defines “church” and “school.”

(b) Prohibits an abortion facility, except as provided by Subsection (c), from being located within 1,500 feet of the property on which a church or school is located.

(c) Provides that the measurement of the distance between an abortion facility and a church or school is from the nearest property line of the property on which the abortion facility is located, along street lines and in direct lines across intersections.

(d) Provides that Subsection (a) does not apply to an abortion facility that began operation before September 1, 2003. Provides that the facility does not violate Subsection (a) if the facility is in compliance with that subsection on the date the facility begins operation and a church or school subsequently is located within 1,500 feet of the facility.

SECTION 5. Requires TDH to prepare the informational materials required by Section 171.014, Health and Safety Code, as added by this Act, and have the materials available for distribution as required by Chapter 171, Health and Safety Code, as added by this Act, not later than December 1, 2003.

SECTION 6. Provides that if any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end, provides that the provisions of this Act are severable.

SECTION 7. Effective date: September 1, 2003.

Makes application of this Act to an abortion prospective to January 1, 2004.