

BILL ANALYSIS

Senate Research Center
80R6093 MSE-F

S.B. 785
By: Shapiro
State Affairs
3/28/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The reporting of some general abortion statistics is currently required by the Department of State Health Services (DSHS). However, the information reported does not offer the broad range of data necessary for analyzing and crafting public policy regarding abortion and there is no audit to ensure compliance with reporting requirements. Additionally, there is no reporting mechanism by which abortion complications are reported and such complications may therefore be categorized as pregnancy-related instead.

As proposed, S.B. 785 requires physicians who provide abortions to report certain information to DSHS on each abortion provided. This bill also ensures accuracy by creating a penalty for failure to submit a report or reporting false information. S.B. 785 also ensures that the patient's identity is kept confidential.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 7 (Section 33.012, Family Code) and SECTION 9 of this bill.

SECTION BY SECTION ANALYSIS

[While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services (DSHS), as the successor agency to TDH.]

SECTION 1. Authorizes this Act to be cited as the Abortion Reporting Requirement Act.

SECTION 2. Amends Subchapter A, Chapter 171, Health and Safety Code, by adding Section 171.006, as follows:

Sec. 171.006. REFERRAL TO DOMESTIC VIOLENCE ASSISTANCE. Requires DSHS to require each person that performs or induces an abortion to maintain a list of domestic violence shelters and assistance programs and to provide a referral to a domestic violence shelter or assistance program if the woman communicates that she is being abused or forced into having the abortion.

SECTION 3. Amends Chapter 171, Health and Safety Code, by adding Subchapter C, as follows:

SUBCHAPTER C. ABORTION REPORTING

Sec. 171.051. ABORTION REPORTING FORM. (a) Requires a physician who performs or induces an abortion to submit a report to DSHS on each abortion performed or induced. Requires the report to be submitted on a form provided by DSHS and requires a copy of this section to be attached to the form.

(b) Prohibits the report from identifying the name of the patient by any means.

(c) Sets forth the information required to be included on the abortion reporting form.

(d) Sets forth the information required to be included on the abortion reporting form if the mother of the unborn child is a minor.

(e) Requires the patient to fill out sections of the form applicable to the patient's personal information. Requires sections filled out by the patient to be at the top of the form. Requires the bottom portion of the reporting form to be completed by the physician performing or inducing the abortion. Authorizes the waiver of the requirement that the patient fill out the top of the form only if the abortion is performed or induced to prevent the death of the mother or to avoid harm to a mother described by Sections 164.052(a)(18) and (19), Occupations Code.

(f) Requires the physician to make all reasonable efforts to ensure that the woman is not being forced to have an abortion, including reporting abuse or neglect under Chapter 261 (Investigation of Report or Child Abuse or Neglect), Family Code, if applicable, if the patient indicates she may be being forced to have an abortion.

(g) Requires a copy of the abortion reporting form to be maintained in the patient's medical file for not less than seven years. Requires the patient to be given a copy of the completed abortion reporting form in person after the physician and patient complete the form.

(h) Requires an abortion reporting form for each abortion submitted to DSHS to include as a cover page a monthly abortion total form. Requires DSHS to ensure that the number of abortion reporting forms submitted by each physician coincides with the monthly total of performed or induced abortions indicated on the form.

Sec. 171.052. ABORTION COMPLICATION FORM. (a) Requires DSHS to prepare an abortion complication form for all physicians licensed and practicing in Texas. Requires a copy of this section to be attached to the form. Requires DSHS to create an Internet website at which the report is authorized to be filed electronically.

(b) Requires a physician practicing in Texas who treats an illness or injury related to complications from an abortion to complete and submit an abortion complication report to DSHS. Authorizes the report to be submitted by mail or electronically filed on an Internet website created by DSHS. Sets forth the information required to be included on the report.

(c) Requires the Texas Medical Board (board) to ensure that abortion complication forms required by this section, together with a copy of this section, are provided to a physician who becomes newly licensed to practice in Texas and not later than December 1 of each year to all physicians licensed to practice in Texas.

(d) Requires a copy of the abortion complication reporting form to be maintained in the patient's medical file for not less than seven years. Requires the patient to receive a copy of the form in person before the person leaves the facility.

Sec. 171.053. REPORTING REQUIREMENTS. Requires a physician performing or inducing an abortion to complete and submit an abortion reporting form for each abortion as required by Section 171.051 not later than the 15th day of each month for abortions performed or induced in the previous calendar month.

(b) Requires a physician to submit an abortion complication report required by Section 171.052 as soon as practicable after treatment of the abortion complication, but in no case more than seven days after the treatment.

(c) Requires DSHS to issue in aggregate a public report summarizing the information submitted on each individual report required by Sections 171.051 and 171.052 not later than April 1 of each year. Requires the public report to cover the entire previous calendar year and to be compiled from the data in all the

abortion reporting forms and the abortion complication reports submitted to DSHS in accordance with Sections 171.051 and 171.052. Requires each public report to also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. Requires DSHS to ensure that none of the information included in the public reports could reasonably lead to identification of any physician who performed or induced an abortion or treated abortion-related complications or of any woman who has had an abortion.

(d) Provides that all information and records held by DSHS under this subchapter are confidential and are not open records for the purposes of Chapter 552, Government Code, except as provided by Subsection (c) and Section 245.023. Prohibits that information from being released or made public on subpoena or otherwise, except that release is authorized for statistical purposes, with the consent of all parties involved, to certain medical personnel, state agencies, or certain courts to enforce this chapter or Chapter 245, or to appropriate state licensing boards to enforce state licensing laws.

(e) Prohibits DSHS or an employee of DSHS from disclosing reports or contents of the reports required by this section and Sections 171.051 and 171.052 to a person or entity in a manner that permits the person or entity to identify in any way the person who is the subject of the report.

(f) Authorizes DSHS to alter the reporting dates established by this section for administrative convenience, fiscal savings, or another valid reason provided that physicians performing or inducing abortions submit the forms monthly and DSHS issues its report once a year.

Sec. 171.054. MODIFICATION OF FORM CONTENTS. Authorizes DSHS to alter the information required by this subchapter only in order to update or to clarify the requirements of those sections. Prohibits DSHS from omitting information required by this subchapter from forms or reports.

Sec. 171.055. PENALTIES. (a) Provides that a physician who does not submit a report required by Sections 171.051 or 171.052 within 30 days of the date the report was due is subject to a late fee of \$500 for each additional 30-day period or portion of a 30-day period the report is overdue.

(b) Provides that a physician required to file a report by Sections 171.051 or 171.052 who has not submitted a complete report before the first anniversary of the date the report was due is subject to a late fee under Subsection (a) and, in an action brought by DSHS, a court is authorized to direct the physician to submit a complete report within a period stated by court order or be subject to sanctions for civil contempt.

(c) Authorizes any group of 10 or more citizens of Texas to petition a court for an injunction against the executive commissioner of the Health and Human Services Commission (executive commissioner) requiring that a complete public report be issued within a period state by court order or that enforcement action be taken if DSHS fails to issue the public report required by Section 171.053 or fails in any way to enforce this subchapter. Provides that failure to comply with the injunction subjects the executive commissioner to sanctions for civil contempt.

Sec. 171.056. OFFENSE. (a) Provides that a person commits an offense if the person takes certain actions.

(b) Provides that a person who discloses confidential identifying information in violation of Section 171.053(e) commits an offense.

(c) Provides that a physician commits an offense if an abortion is performed or induced without making a reasonable effort to ensure that the abortion is not the result of coercion, as defined by Section 1.07, Penal Code.

(d) Provides that an offense under this section is a Class A misdemeanor.

SECTION 4. Amends Section 245.001, Health and Safety Code, to authorize the citation of this chapter as the Texas Abortion Facility Licensing Act, rather than the Texas Abortion Facility Reporting and Licensing Act.

SECTION 5. Amends Section 254.005(e), Health and Safety Code, to delete existing text including the report required under Section 245.011 with the annual report.

SECTION 6. Amends Section 248.003, Health and Safety Code, to make a conforming change.

SECTION 7. Amends Chapter 33, Family Code, by adding Section 33.012, as follows:

Sec. 33.012. JUDICIAL BYPASS REPORTING. (a) Requires the supreme court to adopt rules governing the collection of statistical information relating to applications and appeals granted under Sections 33.003(h) and 33.004(b). Requires information collected under this section to include the total number of petitions or motions filed under those sections and of that number, certain information.

(b) Requires the information collected under this section to be made available to the public in aggregate form by county.

(c) Requires any entity held responsible for the collection and compilation of information collected under this section to ensure that none of the information included in the public reports could reasonably lead to the identification of any individual female.

SECTION 8. Repealer: Section 245.011 (Reporting Requirements; Criminal Penalty), Health and Safety Code.

SECTION 9. (a) Requires the Supreme Court of Texas to adopt rules as required by Section 33.012, Family Code, as added by this Act, and DSHS to provide for distribution the forms required by Sections 171.051 and 171.052, Health and Safety Code, as added by this Act, along with instructions for completing the forms not later than December 1, 2007.

(b) Requires the board to distribute forms as required by Section 171.052(c), Health and Safety Code, as added by this Act, not later than January 1, 2008.

(c) Provides that a physician is not required to submit a report under Section 171.051, Health and Safety Code, as added by this Act, before January 1, 2008.

(d) Provides that a physician is not required to submit a report under Section 171.052, Health and Safety Code, as added by this Act, before March 1, 2008.

(e) Makes application of this Act prospective to January 1, 2008.

SECTION 10. (a) Effective date: September 1, 2007, except as provided by Subsection (b) or (c) of this section.

(b) Effective date of Section 171.056, Health and Safety Code, as added by this Act: March 1, 2008.

(c) Effective date of Sections 5 and 8 of this Act: January 1, 2008.