

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 2571
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to ensure accurate and complete reporting of abortion statistics in Texas to the Department of State Health Services (DSHS). Currently, in regard to abortion, the state requires minimal basic information to be reported, and there is little enforcement or penalty if the information is not submitted or is submitted with knowing falsehood. Although DSHS currently requests some information, this bill expands that information to include a reason for the abortion, other demographic data points, as well as abortion complications. This type of information will be especially helpful in assessing the needs for outreach programs for pregnant women. Furthermore, no current statute requires DSHS to collect this information and report it in aggregate form, and there is no direct accountability for the provider to collect and submit this data. This bill includes enforcement penalties (Class A misdemeanor) in order to ensure that the most complete set of data is collected.

C.S.S.B. 2571 relates to information related to the performance of an abortion and creates an offense.

[**Note:** 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, as the successor agency to TDH.]

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

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. (a) Requires the Texas Department of Health (TDH) to maintain a list of domestic violence shelters and assistance programs and provide a copy of the list to each person that performs or induces an abortion so that the person may refer a woman to a shelter or program if the woman communicates that the woman is being abused or is being forced into having the abortion.

(b) Authorizes a physician to refer a woman to a domestic violence shelter or assistance program as medically necessary.

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 TDH on each abortion the physician

performs or induces. Requires that the report be submitted on a form provided by TDH and 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) Requires that the abortion reporting form for each abortion include space for reporting certain information.
- (d) Requires that the report of each abortion include space for reporting certain information if the mother of the unborn child is a minor.
- (e) Authorizes the patient to fill out sections of the form applicable to the patient's personal information. Requires that sections to be filled out by the patient be at the top of the form. Provides that a patient is not subject to any penalty for failing to fill out any part of the form or filling the form out incorrectly.
- (f) Requires that each section of the bottom portion of the reporting form, if known, be completed by the physician performing or inducing the abortion.
- (g) Requires the physician, if the patient indicates that the patient may be being forced to have an abortion in the space provided under Subsection(c)(6) (relating to a space on the reporting form for the patient to optionally indicate the specific reason the abortion was performed or induced) to make all reasonable efforts to ensure that the woman is not being forced to have the abortion, including reporting abuse or neglect under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, if applicable.
- (h) Requires that a copy of the abortion reporting form be maintained in the patient's medical file for not less than seven years. Requires that the patient be given a copy of the completed abortion reporting form in person after the physician and patient complete the form.
- (i) Requires that an abortion reporting form for each abortion submitted to TDH include as a cover page a monthly abortion total form. Requires TDH to ensure that the number of abortion reporting forms submitted by each physician coincides with the monthly total of the performed or induced abortions indicated on the monthly abortion total form.

Sec. 171.052. ABORTION COMPLICATION REPORT. (a) Requires TDH to prepare an abortion complication report form for all physicians licensed and practicing in this state. Requires that a copy of this section be attached to the form. Requires TDH to create an Internet website at which the report may be filed electronically.

- (b) Requires a physician practicing in the state who treats an illness or injury related to complications from an abortion to complete and submit an abortion complication report to TDH. Authorizes the report to be submitted by mail or electronically filed on an Internet website created by TDH. Sets forth the required information the report must include, if known by the physician.
- (c) Requires the Texas Medical Board (TMB) to ensure that abortion complication report forms required by this section, together with a copy of this section, are provided to a physician who becomes newly licensed to practice in this state, at the same time as official notification to that physician and that the physician is licensed; and not later than December 1 of each year to all physicians licensed to practice in this state.
- (d) Requires that a copy of the abortion complication report form be maintained in the patient's medical file for not less than seven years. Requires the patient to receive a copy of the completed form in person before the patient leaves the facility.

Sec. 171.053. REPORTING REQUIREMENTS. (a) Requires a physician performing or inducing an abortion to complete and submit an abortion reporting form to TDH 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 required to submit an abortion complication report to TDH by Section 171.052 to submit the report as soon as practicable after treatment of the abortion complication, but in no case more than seven days after the treatment.

(c) Requires TDH, not later than April 1 of each year, to issue in aggregate a public report summarizing the information submitted on each individual report required by Sections 171.051 and 171.052. Requires that the public report cover the entire previous calendar year and be compiled from the data in all the abortion reporting forms and the abortion complication reports submitted to TDH in accordance with Sections 171.051 and 171.052. Requires that each public report also provide information for all previous calendar years, adjusted to reflect any additional information from late or corrected reports. Requires TDH 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 except as provided by Subsection (c) and Section 245.023 (Public Information; Toll-Free Telephone Number), all information and records held by TDH under this subchapter are confidential and are not open records for the purposes of Chapter 552 (Public Information), Government Code. Prohibits that information from being released or made public on subpoena or otherwise, except that releases may be made for statistical purposes, but only if a person, patient, physician, or facility is not identified; with the consent of each person, patient, physician, and facility identified in the information released; to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter or Chapter 245 (Abortion Facilities); or to appropriate state licensing boards to enforce state licensing laws.

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

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

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

Sec. 171.055. PENALTIES. (a) Provides that a physician who intentionally or knowingly does not submit a report required by Section 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 Section 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 TDH, may be directed by a court 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 this state, if TDH fails to issue the public report required by Section 171.053 or fails in any way to enforce this subchapter, 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 stated by court order or that enforcement action be taken. 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 other than the patient commits an offense if a person fails to submit a form or report required by this subchapter; submits false information on a form or report required by this subchapter; includes the name or identifying information of the woman who had the abortion in a form or report required by this subchapter; or includes the name or identifying information of a physician in a public report required by Section 171.053(c).

(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 the physician performs or induces an abortion without making a reasonable effort to ensure that the abortion is not the result of coercion, as defined by Section 1.07 (Definitions), Penal Code.

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

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

SECTION 5. Amends Section 245.005(e), Health and Safety Code, to require the licensee, as a condition for renewal of a license, to submit to TDH the annual license renewal fee and an annual report, rather than an annual report including the report required under Section 245.011 (Reporting Requirements; Criminal Penalty).

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

SECTION 7. Repealer: Section 245.011 (Reporting Requirements; Criminal Penalty), Health and Safety Code.

SECTION 8. (a) Requires the Department of State Health Services (DSHS), not later than December 1, 2009, to provide for distribution of 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.

(b) Requires TMB, not later than January 1, 2010, to distribute forms as required by Section 171.052(c), Health and Safety Code, as added by this Act.

(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, 2010.

(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, 2010.

(e) Makes application of this Act prospective to March 1, 2010.

SECTION 9. (a) Effective date, except as provided by Subsection (b) or (c) of this section: September 1, 2009.

(b) Effective date, Section 171.056, Health and Safety Code, as added by this Act: March 1, 2010.

(c) Effective date, Section 245.005(e), Health and Safety Code, as amended by this Act, and the repeal of Section 245.011, Health and Safety Code: January 1, 2010.