

BILL ANALYSIS

Senate Research Center
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S.B. 1146
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2003, two bills were passed that addressed when a facility would need to become a licensed abortion facility. They separately made changes to Section 245.004 of the Health and Safety Code, which inadvertently created two Section 245.004s in statute. Some of the subsections conflict.

Currently, only physicians who perform an abortion at a licensed abortion facility are required to submit a monthly report to the Health and Human Services Commission (HHSC) reporting the abortion. Many abortions go unreported. HHSC must publish a monthly report containing aggregate report data of the abortions reported. The report lists the county of residence of the patient, but there is no requirement that the report include the county where the abortion took place.

S.B. 1146 merges the conflicting sections while amending the number of abortions allowed before a license is required to at least five abortions are performed during any month, or at least 50 abortions are performed in a 12-month period.

If an abortion is performed by a physician who reasonably believes it is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical health as already defined in statute, that abortion is not included in the count toward required licensure.

Physicians who perform an abortion outside of a licensed abortion facility would need to report.

S.B. 1146 also adds a reporting requirement to state in which county the abortion was performed and requires HHSC to specify the number of abortions performed in each county during the reporting period.

As proposed, S.B. 1146 amends current law relating to abortion reporting and exemptions to abortion facility licensing and creates a criminal offense.

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. Amends Subchapter A, Chapter 171, Health and Safety Code, by adding Section 171.008, as follows:

Sec. 171.008. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED OUTSIDE ABORTION FACILITY; CRIMINAL OFFENSE. (a) Requires a physician who performs an abortion at a location other than an abortion facility licensed under Chapter 245 (Abortion Facilities) to complete and submit a monthly report to the Health and Human Services Commission (HHSC) on each abortion performed by the physician. Requires that the report be submitted on a form provided by HHSC.

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

(c) Requires that the report include certain information relating to the procedure.

(d) Provides that all information and records held by HHSC under this section 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 release is authorized to be made in certain circumstances.

(e) Provides that a person commits an offense if the person violates Subsection (b), (c), or (d). Provides that an offense under this subsection is a Class A misdemeanor.

(f) Requires a physician, not later than the 15th day of each month, to submit to HHSC the report required by this section for each abortion performed by the physician at a location other than an abortion facility in the preceding calendar month.

(g) Requires HHSC to establish and maintain a secure electronic reporting system for the submission of the reports required by this section. Requires HHSC to adopt procedures to enforce this section and to ensure that only physicians who perform one or more abortions during the preceding calendar month are required to file the reports under this section for that month.

SECTION 2. Reenacts Section 245.004, Health and Safety Code, as amended by Chapters 198 (H.B. 2292) and 999 (H.B. 15), Acts of the 78th Legislature, Regular Session, 2003, and amends it as follows:

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) Provides that certain facilities need not be licensed under this chapter, including the office of a physician licensed under Subtitle B (Physicians), Title 3, Occupations Code, unless the office is used substantially for the purpose of performing abortions, rather than the purpose of performing more than 50 abortions. Makes a nonsubstantive change.

(b) Provides that, for purposes of this section, a facility is used substantially for the purpose of performing abortions if the facility:

(1) is a provider for performing at least five, rather than 10, abortion procedures during any month, or at least 50 abortion procedures in a 12-month period, rather than 100 abortion procedures in a year;

(2) makes a conforming change to this subdivision;

(3) and (4) makes no changes to these subdivisions.

(b-1) Provides that, in computing the number of abortions performed for purposes of Subsections (b)(1) and (2), an abortion performed in accordance with Section 245.016 (Abortion in Unlicensed Abortion Facility to Prevent Death or Serious Impairment) is not included.

(c) Makes no changes to this subsection.

SECTION 3. Amends Section 245.011(c), Health and Safety Code, to require that the report include certain information, including the type of abortion procedure performed, rather than the type of abortion procedure, and the county in which the abortion was performed. Makes a nonsubstantive change.

SECTION 4. Amends Section 245.002, Health and Safety Code, by adding Subdivision (3) to define "commission" for Chapter 245.

SECTION 5. Amends Section 245.0116, Health and Safety Code, as follows:

Sec. 245.0116. New heading: COMMISSION REPORT. (a) Requires HHSC, rather than the Department of State Health Services (DSHS), to publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under Sections 171.008 and 245.011 (Physician Reporting Requirements; Criminal Penalty). Requires that the report specify the number of abortions performed in each county during the reporting period. Makes a nonsubstantive change.

(b) Prohibits HHSC's, rather than DSHS's, monthly report from identifying by any means an abortion facility, a physician performing the abortion, or a patient.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2021.