

By: Perry, et al.

S.B. No. 1146

A BILL TO BE ENTITLED
AN ACT

relating to abortion reporting and exemptions to abortion facility licensing; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008. REPORTING REQUIREMENTS FOR ABORTIONS PERFORMED OUTSIDE ABORTION FACILITY; CRIMINAL OFFENSE. (a) A physician who performs an abortion at a location other than an abortion facility licensed under Chapter 245 must complete and submit a monthly report to the commission on each abortion performed by the physician. The report must be submitted on a form provided by the commission.

(b) The report may not identify by any means the patient.

(c) The report must include:

(1) the type of facility at which the abortion was performed and the licensing status of that facility;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure performed;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient; and

(10) the county in which the abortion was performed.

(d) All information and records held by the commission under this section are confidential and are not open records for the purposes of Chapter 552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, or physician performing an abortion is not identified;

(2) with the consent of each person, patient, and physician identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

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

(f) Not later than the 15th day of each month, a physician shall submit to the commission 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) The commission shall establish and maintain a secure electronic reporting system for the submission of the reports required by this section. The commission shall 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. 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, is reenacted and amended to read as follows:

Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT. (a) The following facilities need not be licensed under this chapter:

- (1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); ~~[or]~~
- (2) the office of a physician licensed under Subtitle B, Title 3, Occupations Code, unless the office is used substantially for the purpose of performing ~~[more than 50]~~ abortions; or
- (3) an ambulatory surgical center licensed under Chapter 243.

(b) 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:
 - (A) at least five ~~[10]~~ abortion procedures during any month; or
 - (B) at least 50 ~~[100]~~ abortion procedures in a 12-month period ~~[year]~~;
- (2) 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 five ~~[10]~~ procedures in a month if the facility were operating at least 20 days in a month;
- (3) holds itself out to the public as an abortion provider by advertising by any public means, including advertising placed in a newspaper, telephone directory, magazine, or electronic medium, that the facility performs abortions; or
- (4) applies for an abortion facility license.

(b-1) In computing the number of abortions performed for purposes of Subsections (b)(1) and (2), an abortion performed in accordance with Section 245.016 is not included.

(c) 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.

SECTION 3. Section 245.011(c), Health and Safety Code, is amended to read as follows:

- (c) The report must include:
- (1) whether the abortion facility at which the abortion is performed is licensed under this chapter;
 - (2) the patient's year of birth, race, marital status, and state and county of residence;
 - (3) the type of abortion procedure performed;
 - (4) the date the abortion was performed;
 - (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;
 - (6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;
 - (7) the date, if known, of the patient's last menstrual cycle;
 - (8) the number of previous live births of the patient; ~~[and]~~
 - (9) the number of previous induced abortions of the patient; and
 - (10) the county in which the abortion was performed.

SECTION 4. Section 245.002, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Commission" means the Health and Human Services Commission.

SECTION 5. Section 245.0116, Health and Safety Code, is amended to read as follows:

Sec. 245.0116. COMMISSION [~~DEPARTMENT~~] REPORT. (a) The commission [~~department~~] shall publish on its Internet website a monthly report containing aggregate data of the information in the reports submitted under Sections 171.008 and [Section] 245.011. The report must specify the number of abortions performed in each county during the reporting period.

(b) The commission's [~~department's~~] monthly report may not identify by any means an abortion facility, a physician performing the abortion, or a patient.

SECTION 6. The changes in law made by this Act apply only to an abortion performed on or after the effective date of this Act.

SECTION 7. This Act takes effect September 1, 2021.