

By: Williams

S.B. No. 835

A BILL TO BE ENTITLED

AN ACT

relating to regulation of abortion; creating an offense.

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

SECTION 1. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 171 to read as follows:

CHAPTER 171. ABORTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171.001. DEFINITION. In this chapter, "abortion" means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

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

Sec. 171.003. ABORTION OF FETUS AGE 16 WEEKS OR MORE. 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. The department shall enforce this chapter.

[Sections 171.005-171.010 reserved for expansion]

SUBCHAPTER B. INFORMED CONSENT

Sec. 171.011. INFORMED CONSENT REQUIRED. A person may not

1 perform an abortion without the voluntary and informed consent of
2 the woman on whom the abortion is to be performed.

3 Sec. 171.012. VOLUNTARY AND INFORMED CONSENT. (a) Except
4 in the case of a medical emergency, consent to an abortion is
5 voluntary and informed only if:

6 (1) the physician who is to perform the abortion or the
7 referring physician informs the woman on whom the abortion is to be
8 performed of:

9 (A) the name of the physician who will perform
10 the abortion;

11 (B) the particular medical risks associated with
12 the particular abortion procedure to be employed, including, when
13 medically accurate:

14 (i) the risks of infection, hemorrhage, and
15 breast cancer; and

16 (ii) the potential danger to a subsequent
17 pregnancy and of infertility;

18 (C) the probable gestational age of the unborn
19 child at the time the abortion is to be performed; and

20 (D) the medical risks associated with carrying
21 the child to term;

22 (2) the physician who is to perform the abortion or the
23 physician's agent informs the woman that:

24 (A) medical assistance benefits may be available
25 for prenatal care, childbirth, and neonatal care;

26 (B) the father is liable for assistance in the
27 support of the child without regard to whether the father has

1 offered to pay for the abortion;

2 (C) public and private agencies provide
3 pregnancy prevention counseling and medical referrals for
4 obtaining pregnancy prevention medications or devices; and

5 (D) the woman has the right to review the printed
6 materials described by Section 171.014, that those materials have
7 been provided by the Texas Department of Health and are accessible
8 on an Internet website sponsored by the department, and that the
9 materials describe the unborn child and list agencies that offer
10 alternatives to abortion;

11 (3) the woman certifies in writing before the abortion
12 is performed that the information described by Subdivisions (1) and
13 (2) and by Section 171.017 has been provided to her and that she has
14 been informed of her opportunity to review the information
15 described by Section 171.014; and

16 (4) before the abortion is performed, the physician
17 who is to perform the abortion receives a copy of the written
18 certification required by Subdivision (3).

19 (b) The information required to be provided under
20 Subsections (a)(1) and (2) must be provided:

21 (1) orally by telephone or in person; and

22 (2) at least 24 hours before the abortion is to be
23 performed.

24 (c) When providing the information under Subsection
25 (a)(2)(D), the physician or the physician's agent must provide the
26 woman with the address of the Internet website on which the printed
27 materials described by Section 171.014 may be viewed as required by

1 Section 171.014(e).

2 Sec. 171.013. DISTRIBUTION OF STATE MATERIALS. (a) If the
3 woman chooses to view the materials described by Section 171.014,
4 the physician or the physician's agent shall furnish copies of the
5 materials to her at least 24 hours before the abortion is to be
6 performed. A physician or the physician's agent may furnish the
7 materials to the woman by mail if the materials are mailed,
8 restricted delivery to addressee, at least 72 hours before the
9 abortion is to be performed.

10 (b) Except as provided by Section 171.017, a physician or
11 the physician's agent is not required to furnish copies of the
12 materials if the woman provides the physician with a written
13 statement that she chooses to view the materials on the Internet
14 website sponsored by the department.

15 (c) The physician and the physician's agent may
16 disassociate themselves from the materials and may choose to
17 comment on the materials or to refrain from commenting.

18 Sec. 171.014. INFORMATIONAL MATERIALS. (a) The department
19 shall publish informational materials that include:

20 (1) the information required to be provided under
21 Sections 171.012(a)(1)(B) and (D) and (a)(2)(A), (B), and (C); and

22 (2) the materials required by Sections 171.015,
23 171.016, and 171.017.

24 (b) The materials shall be published in:

25 (1) English and Spanish;

26 (2) an easily comprehensible form; and

27 (3) a typeface large enough to be clearly legible.

1 (c) The materials shall be available at no cost from the
2 department on request. The department shall provide appropriate
3 quantities of the materials to any person.

4 (d) The department shall annually review the materials to
5 determine if changes to the contents of the materials are
6 necessary. The department shall adopt rules necessary for
7 considering and making changes to the materials.

8 (e) The department shall develop and maintain an Internet
9 website to display the information required to be published under
10 this section. In developing and maintaining the website the
11 department shall, to the extent reasonably practicable, safeguard
12 the website against alterations by anyone other than the department
13 and shall monitor the website each day to prevent and correct
14 tampering. The department shall ensure that the website does not
15 collect or maintain information regarding access to the website.

16 Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE
17 AGENCIES. The informational materials must include either:

18 (1) geographically indexed materials designed to
19 inform the woman of public and private agencies and services
20 available to assist a woman through pregnancy, childbirth, and the
21 child's dependency, including:

22 (A) a comprehensive list of adoption agencies;

23 (B) a description of the services the adoption
24 agencies offer; and

25 (C) a description of the manner, including
26 telephone numbers, in which an adoption agency may be contacted; or

27 (2) a toll-free, 24-hour telephone number that may be

1 called to obtain an oral list and description of agencies described
2 by Subdivision (1) that are located near the caller and of the
3 services the agencies offer.

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

11 (b) The materials must include color pictures representing
12 the development of the child at two-week gestational increments.
13 The pictures must contain the dimensions of the unborn child and
14 must be realistic.

15 (c) The materials provided under this section must be
16 objective and nonjudgmental and be designed to convey only accurate
17 scientific information about the unborn child at the various
18 gestational ages.

19 Sec. 171.017. INFORMATION RELATING TO PREVENTION OF
20 PREGNANCY. (a) The informational materials must include materials
21 that are designed to inform the woman of pregnancy prevention
22 methods for females and males and that:

23 (1) describe each method in detail; and

24 (2) include pictures or diagrams that illustrate the
25 proper use of each method.

26 (b) The physician who is to perform the abortion, the
27 referring physician, or the agent of either physician shall provide

1 a woman requesting an abortion with the materials published under
2 this section, without regard to whether the woman chooses to view
3 the informational materials under Section 171.012(a)(2)(D).

4 Sec. 171.018. PERIODS RUN CONCURRENTLY. If the woman is an
5 unemancipated minor subject to Chapter 33, Family Code, the 24-hour
6 periods established under Sections 171.012(b) and 171.013(a) may
7 run concurrently with the period during which actual or
8 constructive notice is provided under Section 33.002, Family Code.

9 Sec. 171.019. OFFENSE. A physician who intentionally
10 performs an abortion on a woman in violation of this subchapter
11 commits an offense. An offense under this section is a misdemeanor
12 punishable by a fine not to exceed \$10,000. In this section,
13 "intentionally" has the meaning assigned by Section 6.03(a), Penal
14 Code.

15 SECTION 2. Section 245.004, Health and Safety Code, is
16 amended to read as follows:

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

20 (1) a hospital licensed under Chapter 241 (Texas
21 Hospital Licensing Law); or

22 (2) the office of a physician licensed under Subtitle
23 B, Title 3, Occupations Code, unless the office is used
24 substantially for the purpose of performing [~~more than 300~~]
25 abortions [~~in any 12-month period~~].

26 (b) For purposes of this section, a facility is used
27 substantially for the purpose of performing abortions if the

1 facility:

2 (1) is a provider for performing:

3 (A) at least 10 abortion procedures during any
4 month; or

5 (B) at least 100 abortion procedures in a year;

6 (2) operates less than 20 days in a month and the
7 facility, in any month, is a provider for performing a number of
8 abortion procedures that would be equivalent to at least 10
9 procedures in a month if the facility were operating at least 20
10 days in a month;

11 (3) holds itself out to the public as an abortion
12 provider by advertising by any public means, including advertising
13 placed in a newspaper, telephone directory, magazine, or electronic
14 medium, that the facility performs abortions; or

15 (4) applies for an abortion facility license.

16 (c) For purposes of this section, an abortion facility is
17 operating if the facility is open for any period of time during a
18 day and has on site at the facility or on call a physician available
19 to perform abortions. [In computing the number of abortions
20 performed in the office of a physician under Subsection (a)(2), an
21 abortion performed in accordance with Section 245.016 is not
22 included.]

23 SECTION 3. Section 245.010(a), Health and Safety Code, is
24 amended to read as follows:

25 (a) The rules must contain minimum standards to protect the
26 health and safety of a patient of an abortion facility and must
27 contain provisions requiring compliance with the requirements of

1 Subchapter B, Chapter 171.

2 SECTION 4. Chapter 245, Health and Safety Code, is amended
3 by adding Section 245.0104 to read as follows:

4 Sec. 245.0104. LOCATION OF ABORTION FACILITY. (a) In this
5 section:

6 (1) "Church" means a facility that is owned by a
7 religious organization and that is used primarily for religious
8 services.

9 (2) "School" means a public or private school that
10 provides any part of kindergarten through 12th grade.

11 (b) Except as provided by Subsection (c), an abortion
12 facility may not be located within 1,500 feet of the property on
13 which a church or school is located.

14 (c) The measurement of the distance between an abortion
15 facility and a church or school is from the nearest property line of
16 the church or school to the property line of the property on which
17 the abortion facility is located, along street lines and in direct
18 lines across intersections.

19 (d) Subsection (a) does not apply to an abortion facility
20 that began operation before September 1, 2003. An abortion
21 facility does not violate Subsection (a) if the facility is in
22 compliance with that subsection on the date the facility begins
23 operation and a church or school subsequently is located within
24 1,500 feet of the facility.

25 SECTION 5. The Texas Department of Health shall prepare the
26 informational materials required by Section 171.014, Health and
27 Safety Code, as added by this Act, and shall have the materials

1 available for distribution as required by Chapter 171, Health and
2 Safety Code, as added by this Act, not later than December 1, 2003.

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

8 SECTION 7. This Act takes effect September 1, 2003, and
9 applies only to an abortion that is performed on or after January 1,
10 2004. An abortion that is performed before January 1, 2004, is
11 governed by the law as it existed immediately before the effective
12 date of this Act, and that law is continued in effect for that
13 purpose.