

## **BILL ANALYSIS**

C.S.H.B. 2962  
By: Capriglione  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that certain abortion complication reporting requirements in state regulations do not statutorily apply to hospitals or emergency rooms and contend that this loophole hinders accurate abortion complication data collection. C.S.H.B. 2962 seeks to improve the collection of abortion complication data by requiring each health care facility that provides emergency medical care to submit an abortion complication report containing specified information to the Department of State Health Services.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2962 amends the Health and Safety Code to require each hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care to submit to the Department of State Health Services (DSHS) in the form and manner prescribed by DSHS rule a quarterly report on each abortion complication, as defined by the bill, diagnosed or treated at the facility. The bill requires DSHS to develop a form for reporting abortion complications not later than January 1, 2018, and to publish the form on the DSHS website. The bill prohibits such a report from identifying by any means the physician performing an abortion or the patient but requires a report to identify the name and type of facility submitting the report and to include certain specified information, if known, for each abortion complication.

C.S.H.B. 2962 makes all information and records held by DSHS under an abortion complication report confidential and exempt from disclosure as an open record under state public information law. The bill prohibits such information from being released or made public on subpoena or otherwise but authorizes release to be made for statistical purposes if a person, patient, or facility is not identified; with the consent of each person, patient, and facility identified in the information released; to medical personnel, appropriate state agencies, or county and district courts to enforce the Woman's Right to Know Act; or to appropriate state licensing boards to enforce state licensing laws.

C.S.H.B. 2962 requires an abortion complication report to meet the federal reporting requirements that mandate the most specific, accurate, and complete coding and reporting for the highest level of specificity. The bill requires DSHS to develop and publish on the DSHS website

an annual report that aggregates on a statewide basis each abortion complication required to be reported for the previous calendar year. The bill subjects a facility that violates the abortion complication reporting requirements to a civil penalty of \$500 for each violation and authorizes the attorney general, at the request of DSHS, to file an action to recover such a civil penalty. The bill authorizes the attorney general to recover attorney's fees and costs incurred in bringing such an action and establishes that each day of a continuing violation constitutes a separate ground for recovery. The bill establishes that the third separate violation constitutes cause for the revocation or suspension of a facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the facility by DSHS.

C.S.H.B. 2962 requires the executive commissioner of the Health and Human Services Commission, not later than January 1, 2018, to adopt the rules necessary to implement the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2962 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CRIMINAL OFFENSE. (a) In this section:

(1) "Abortion complication" means a harmful event or negative outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

- (A) shock;
- (B) uterine perforation;
- (C) cervical laceration;
- (D) hemorrhage;
- (E) aspiration or allergic response;
- (F) infection;
- (G) sepsis;
- (H) death of the patient;
- (I) incomplete abortion;
- (J) damage to the uterus; or
- (K) an infant born alive after the abortion.

(2) "Facility" means a hospital, public health clinic, birthing center, outpatient clinic, community health center, abortion facility, freestanding emergency medical

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.006 to read as follows:

Sec. 171.006. ABORTION COMPLICATION REPORTING REQUIREMENTS; CIVIL PENALTY. (a)

In this section "abortion complication" means any harmful event or adverse outcome with respect to a patient related to an abortion that is performed on the patient and that is diagnosed or treated by a health care practitioner or at a health care facility and includes:

- (1) shock;
- (2) uterine perforation;
- (3) cervical laceration;
- (4) hemorrhage;
- (5) aspiration or allergic response;
- (6) infection;
- (7) sepsis;
- (8) death of the patient;
- (9) incomplete abortion;
- (10) damage to the uterus; or
- (11) an infant born alive after the abortion.

(b) The reporting requirements of this section apply only to a health care facility that is a hospital, abortion facility, freestanding emergency medical care

care facility, or health care facility that provides emergency medical care, as defined by Section 773.003.

(b) Each facility shall submit to the department in the form and manner prescribed by department rule a quarterly report on each abortion complication diagnosed or treated at the facility.

(c) Each health care practitioner providing diagnosis of or treatment for an abortion complication shall submit to the department in the form and manner prescribed by department rule an abortion complication report not later than the 30th day after the date the complication is diagnosed or treatment is provided for the abortion complication.

(d) The department shall develop a form for reporting an abortion complication under Subsection (b) or (c) and publish the form on the department's Internet website.

(e) A report submitted under this section may not identify by any means the physician performing an abortion or the patient.

(f) A report submitted under this section must include, if known, for each abortion complication:

(1) the date of the abortion that caused or may have caused the complication;

(2) the type of abortion that caused or may have caused the complication;

(3) the gestational age of the fetus when the abortion was performed;

(4) the name and type of facility in which the abortion was performed;

(5) the date the complication was diagnosed or treated;

(6) the name and type of facility in which the complication was diagnosed or treated;

(7) a description of the complication;

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

(9) the number of previous induced abortions of the patient.

(g) Except as provided by Section 245.023, all information and records held by the department 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:

facility, or health care facility that provides emergency medical care, as defined by Section 773.003.

(c) Each facility described by Subsection (b) shall submit to the department in the form and manner prescribed by department rule a quarterly report on each abortion complication diagnosed or treated at the facility.

(d) The department shall develop a form for reporting an abortion complication under Subsection (c) and publish the form on the department's Internet website.

(e) A report under this section may not identify by any means the physician performing an abortion or the patient.

(f) A report under this section must identify the name and type of facility submitting the report and must include, if known, for each abortion complication:

(1) the date of the abortion that caused or may have caused the complication;

(2) the type of abortion that caused or may have caused the complication;

(3) the gestational age of the fetus when the abortion was performed;

(4) the name and type of the facility in which the abortion was performed;

(5) the date the complication was diagnosed or treated;

(6) the name and type of any facility other than the reporting facility in which the complication was diagnosed or treated;

(7) a description of the complication;

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

(9) the number of previous induced abortions of the patient.

(g) Except as provided by Section 245.023, all information and records held by the department 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 facility is not identified;  
(2) with the consent of each person, patient, and facility 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.  
(h) A report submitted under this section must meet the federal reporting requirements that mandate the most specific, accurate, and complete coding and reporting for the highest level of specificity.

(i) A health care practitioner commits an offense if the practitioner violates this section. An offense under this subsection is a Class A misdemeanor.

(j) A violation of this section constitutes cause for the revocation or suspension of a health care facility's or health care practitioner's license, permit, registration, certificate, or other authority or for other disciplinary action against a facility or health care practitioner by the appropriate state regulatory board.

SECTION 2. Not later than January 1, 2018:

(1) the Department of State Health Services shall develop the forms required by Section 171.006, Health and Safety Code, as added by this Act; and  
(2) the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement Section 171.006, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect September 1, 2017.

(1) for statistical purposes, but only if a person, patient, or facility is not identified;  
(2) with the consent of each person, patient, and facility 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.  
(h) A report submitted under this section must meet the federal reporting requirements that mandate the most specific, accurate, and complete coding and reporting for the highest level of specificity.

(i) The department shall develop and publish on the department's Internet website an annual report that aggregates on a statewide basis each abortion complication required to be reported under Subsection (f) for the previous calendar year.

(j) A facility that violates this section is subject to a civil penalty of \$500 for each violation. The attorney general, at the request of the department, may file an action to recover a civil penalty assessed under this subsection and may recover attorney's fees and costs incurred in bringing the action. Each day of a continuing violation constitutes a separate ground for recovery.

(k) The third separate violation of this section constitutes cause for the revocation or suspension of a facility's license, permit, registration, certificate, or other authority or for other disciplinary action against the facility by the department.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.

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