

- SUBJECT:** Requiring health care facilities to report abortion complications
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 8 ayes — Cook, Craddick, Guillen, K. King, Kuempel, Meyer, Paddie, Smithee
- 3 nays — Giddings, Farrar, E. Rodriguez
- 2 absent — Geren, Oliveira
- WITNESSES:** For — Kyleen Wright, Texans for Life; Joe Pojman, Texas Alliance for Life; Jennifer Allmon, The Texas Catholic Conference of Bishops; (*Registered, but did not testify:* Tim Ottinger, Catholic Health Association of Texas; Gus Reyes, Christian Life Commission of Texas Baptists; Jenny Andrews, Elisabeth Wheatly, Texas Alliance for Life; Elizabeth Graham, Emily Kebodeaux, and John Seago, Texas Right to Life; Nicole Hudgens and Jonathan Saenz, Texas Values Action; Cindy Asmuseen; Trayce Bradford; Dana Hodges; Debra McDaniels)
- Against — Blake Rocab, NARAL Pro-Choice Texas; (*Registered, but did not testify:* Rebecca Robertson, ACLU of Texas; Juliana Kerker, American Congress of Obstetricians and Gynecologists-Texas District, Texas Association of Obstetricians and Gynecologists; Carla Blakey, Julie Fleming, and Courtney Szigetvari, Left Up To Us; Zoe Fay-Stindt, Literary Women in Action; Lucy Stein, Progress Texas; Katherine Miller, Texas Freedom Network; Lauren Kreeger, The League of Women Voters of Texas; John Burleson, Travis County Resistance; Chuck Freeman, Texas Unitarian Universalist Justice Ministry; and 20 individuals)
- On — Julie Chicoine, Texas Hospital Association; (*Registered, but did not testify:* Jeffrey Swanson and Patrick Waldron, Texas Department of State Health Services; Michelle Romero, Texas Medical Association)
- BACKGROUND:** 25 TAC part 1, ch. 139, subch. A, sec. 139.5 requires abortion facilities to

complete an induced abortion report form for each abortion performed. The form includes a section to report complications of abortion.

DIGEST: CSHB 2962 would require reporting of abortion complications and add a civil penalty for facilities that failed to comply.

Facilities that would be required to file the quarterly reports would include hospitals, abortion facilities, freestanding emergency medical care facilities, and health care facilities that provide emergency care. A facility that violated the reporting requirements would be subjected to a \$500 penalty for each violation. Each day of a continuing violation would constitute a separate ground for recovery. The third separate violation would constitute cause for revoking or suspending a facility's license, permit, registration, certificate, or other authority or for other disciplinary action by the Department of State Health Services.

The bill would define abortion complication to mean any harmful event or adverse outcome for a patient related to an abortion that is diagnosed or treated by a health care practitioner or at a health care facility.

Complications would include shock, uterine perforation, cervical laceration, hemorrhage, aspiration or allergic response, infection, sepsis, death of the patient, incomplete abortion, damage to the uterus, or an infant born alive after the abortion.

The Department of State Health Services would be required to develop the reporting form and publish the results annually on its website. A report could not identify the physician performing an abortion or the patient.

A report would identify the name and type of facility submitting the report and would have to include, if known:

- the date of the abortion that caused or may have caused the complication;
- the type of abortion that caused or may have caused the complication;
- the gestational age of the fetus when the abortion was performed;

- the name and type of facility in which the abortion was performed;
- the date the complication was diagnosed or treated;
- the name and type of any facility other than the reporting facility in which the complication was diagnosed or treated;
- a description of the complication;
- the number of previous live births and previous induced abortions of the patient.

Except for public information required under Health and Safety Code, sec. 245.023, all information and records held by DSHS would be confidential and not subjected to state open records laws. It could not be made public on subpoena or otherwise. Release of information and records could be made:

- for statistical purposes, but only if a person, patient, or facility was 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 chapter; or
- to appropriate state licensing boards to enforce state licensing laws.

A report would be required to meet the federal reporting requirements that mandate the most specific, accurate, and complete coding and reporting.

By January 1, 2018, DSHS would be required to develop the forms required under the bill and the Health and Human Services Commission's executive commissioner would be required to adopt rules as necessary to implement the bill's provisions.

The bill would take effect September 1, 2017.

**SUPPORTERS  
SAY:**

CSHB 2962 would provide more accurate disclosure of complications from abortions by requiring reports from hospitals and other health facilities where women had been treated for abortion-related

complications. This data would provide better information about the strengths and weaknesses of Texas abortion laws, allowing legislative responses if necessary to protect the health and safety of women.

Current reporting requirements lack the specificity needed to determine that a complication was connected to an abortion. In 2016, the U.S. Supreme Court, in *Whole Woman's Health v. Hellerstedt*, struck down requirements passed by the Legislature in 2013 that abortions be performed in surgical centers and doctors have admitting privileges in a nearby hospital. The court said evidence presented in the district court showed that before the passage of the bill abortion in Texas was extremely safe with particularly low rates of serious complication. The bill would help ensure that in the future Texas has data to support legislation passed to improve women's health and safety.

OPPONENTS  
SAY:

CSHB 2962 would mandate medically unnecessary reporting while not requiring other reporting that could be helpful to researchers, such as complications from self-induced abortions. It could result in some complications being double counted by requiring reporting of both uterine perforation and damage to the uterus. The bill would not require the reporting of other information that could impact the health and safety of abortion such as the name of the physician that performed the abortion. Texas officials should be able to identify a doctor who was performing unsafe abortions.

Before creating a new regulatory burden, the Legislature should require the Department of State Health Services to convene a work group of hospitals and physicians to simplify abortion-related reporting forms.

NOTES:

The Legislative Budget Board fiscal note states that the bill could result in costs for local hospitals to comply with the reporting requirements but that those costs could not be determined.

A companion bill, SB 1602 by Campbell, was reported engrossed by the Senate on May 2.