

HEALTH AND SAFETY CODE CHAPTER 245. ABORTION FACILITIES

HEALTH AND SAFETY CODE

TITLE 4. HEALTH FACILITIES

SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 245. ABORTION FACILITIES

Sec. 245.001. SHORT TITLE. This chapter may be cited as the Texas Abortion Facility Reporting and Licensing Act. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.002. DEFINITIONS. In this chapter:

(1) "Abortion" means an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

(2) "Abortion facility" means a place where abortions are performed.

(3) "Board" means the Texas Board of Health.

(4) "Department" means the Texas Department of Health.

(5) "Patient" means a female on whom an abortion is performed, but does not include a fetus.

(6) "Person" means an individual, firm, partnership, corporation, or association.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.003. LICENSE REQUIRED. (a) Except as provided by Section 245.004, a person may not establish or operate an abortion facility in this state without an appropriate license issued under this chapter.

(b) Each abortion facility must have a separate license.

(c) A license is not transferable or assignable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Text of section as amended by Acts 2003, 78th Leg., Ch. 198, Sec.

2.63 (a).

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 for the purpose of performing more than 50 abortions in any 12-month period.

(b) In computing the number of abortions performed in the office of a physician under Subsection (a)(2), an abortion performed in accordance with Section 245.016 is not included.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.63(a), eff. Sept. 1, 2003.

Text of section as amended by Acts 2003, 78th Leg., Ch. 999, Sec. 2

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);

(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 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 10 abortion procedures during any month; or

(B) at least 100 abortion procedures in a 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 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.

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.01, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.788, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 2, eff. Sept. 1, 2003.

Sec. 245.005. LICENSE APPLICATION AND ISSUANCE. (a) An applicant for an abortion facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the Texas State Board of Medical Examiners.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the abortion facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual report, including the report required under Section 245.011.

(f) Information regarding the licensing status of an abortion facility is an open record for the purposes of Chapter 552, Government Code, and shall be made available by the department on request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 856, Sec. 2, eff. Sept. 1, 1995.

Sec. 245.006. INSPECTIONS. (a) The department may inspect an abortion facility at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall inspect an abortion facility before renewing the facility's license under Section 245.005(e). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1997.

Sec. 245.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter and Chapter 171. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 999, Sec. 3, eff. Sept. 1, 2003.

Sec. 245.008. ABORTION FACILITY LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the abortion facility licensing fund and may be appropriated to the department only to administer and enforce this chapter. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.009. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171.

(b) Only a physician as defined by Subtitle B, Title 3, Occupations Code, may perform an abortion.

(c) The standards may not be more stringent than Medicare

certification standards, if any, for:

- (1) qualifications for professional and nonprofessional personnel;
- (2) supervision of professional and nonprofessional personnel;
- (3) medical treatment and medical services provided by an abortion facility and the coordination of treatment and services, including quality assurance;
- (4) sanitary and hygienic conditions within an abortion facility;
- (5) the equipment essential to the health and welfare of the patients;
- (6) clinical records kept by an abortion facility; and
- (7) management, ownership, and control of the facility.

(d) This section does not authorize the board to:

- (1) establish the qualifications of a licensed practitioner; or
- (2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 23, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.789, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 999, Sec. 4, eff. Sept. 1, 2003.

Sec. 245.0105. UNIQUE IDENTIFYING NUMBER; DISCLOSURE IN ADVERTISEMENT. (a) The department shall assign to each abortion facility a unique license number that may not change during the period the facility is operating in this state.

(b) An abortion facility shall include the unique license number assigned to the facility by the department in any abortion advertisement directly relating to the provision of abortion services at the facility.

(c) In this section, "abortion advertisement" means:

- (1) any communication that advertises the

availability of abortion services at an abortion facility and that is disseminated through a public medium, including an advertisement in a newspaper or other publication or an advertisement on television, radio, or any other electronic medium; or

(2) any commercial use of the name of the facility as a provider of abortion services, including the use of the name in a directory, listing, or pamphlet.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1997.

Sec. 245.011. REPORTING REQUIREMENTS; CRIMINAL PENALTY.

(a) Each abortion facility must submit an annual report to the department on each abortion that is performed at the abortion facility. The report must be submitted on a form provided by the department.

(b) The report may not identify by any means the physician performing the abortion or the patient.

(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;

(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 period of gestation 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.

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter 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 abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion 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.

(e) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1120, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 19.02, eff. Sept. 1, 1999.

Sec. 245.012. DENIAL, SUSPENSION, PROBATION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

(c) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. If the department issues an order of immediate suspension or revocation, the department shall immediately give the chief executive officer of the abortion facility adequate notice of the action and the procedure governing appeal of the action. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the 14th day after the effective date of the suspension or revocation.

(d) If the department finds that an abortion facility is in repeated noncompliance with this chapter or rules adopted under this chapter but that the noncompliance does not in any way involve

the health and safety of the public or an individual, the department may schedule the facility for probation rather than suspending or revoking the facility's license. The department shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins. The department shall designate a period of not less than 30 days during which the facility will remain under probation. During the probation period, the facility must correct the items that were in noncompliance and report the corrections to the department for approval.

(e) The department may suspend or revoke the license of an abortion facility that does not correct items that were in noncompliance or that does not comply with this chapter or the rules adopted under this chapter within the applicable probation period. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 23, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 802, Sec. 7, 8, eff. June 20, 2003.

Sec. 245.013. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an abortion facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an abortion facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the abortion facility is located or in Travis County.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 245.003(a).

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.02, eff. Sept. 1, 1999.

Sec. 245.015. CIVIL PENALTY. (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT. This chapter does not remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed abortion facility if, at the commencement of the abortion, the physician reasonably believes that the abortion is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1411, Sec. 22.03, eff. Sept. 1, 1999.

Sec. 245.017. ADMINISTRATIVE PENALTY. (a) The department may assess an administrative penalty against a person who violates

this chapter or a rule adopted under this chapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty under this chapter are subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.018. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.

(a) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty, based on the factors listed in Section 245.017(c); and
- (3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(b) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(c) If the person notified of the violation accepts the determination of the department, the commissioner of public health or the commissioner's designee shall issue an order approving the determination and ordering the person to pay the recommended

penalty.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.019. HEARING; ORDER. (a) If the person requests a hearing, the commissioner of public health or the commissioner's designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person;

and

- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty, if a penalty is determined to be warranted.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty or may find that no violation has occurred.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.020. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; JUDICIAL REVIEW; REFUND. (a) The commissioner of public health or the commissioner's designee shall give notice of the commissioner's order under Section 245.019(c) to the person alleged to have committed the violation. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed; and
- (3) a statement of the right of the person to judicial review of the commissioner's order.

(b) Not later than the 30th day after the date the decision is final as provided by Chapter 2001, Government Code, the person shall:

- (1) pay the penalty in full;
- (2) pay the amount of the penalty and file a petition

for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Within the 30-day period, a person who acts under Subsection (b)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the department by certified mail.

(d) If the department receives a copy of an affidavit under Subsection (c)(2), the department may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(e) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the department may refer the matter to the attorney general for collection of the amount of the penalty.

(f) Judicial review of the order of the commissioner of public health:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(g) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.021. PENALTY DEPOSITED TO STATE TREASURY. A civil or administrative penalty collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.022. RECOVERY OF COSTS. (a) The department may assess reasonable expenses and costs against a person in an administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person. The person shall pay

expenses and costs assessed under this subsection not later than the 30th day after the date a board order requiring the payment of expenses and costs is final. The department may refer the matter to the attorney general for collection of the expenses and costs.

(b) If the attorney general brings an action against a person under Section 245.013 or 245.015 or an action to enforce an administrative penalty assessed under Section 245.017 and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(c) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action, including reasonable investigative costs, attorney's fees, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., ch. 23, Sec. 4, eff. Sept. 1, 1997.

Sec. 245.023. PUBLIC INFORMATION; TOLL-FREE TELEPHONE NUMBER. (a) The department on request shall make the following information available to the public:

(1) the status of the license of any abortion facility;

(2) the date of the last inspection of the facility, any violation discovered during that inspection that would pose a health risk to a patient at the facility, any challenge raised by the facility to the allegation that there was a violation, and any corrective action that is acceptable to the department and that is being undertaken by the facility with respect to the violation; and

(3) an administrative or civil penalty imposed against the facility or a physician who provides services at the facility, professional discipline imposed against a physician who provides services at the facility, and any criminal conviction of the facility or a physician who provides services at the facility that is relevant to services provided at the facility.

(b) Subsection (a) does not require the department to provide information that is not in the possession of the

department. The Texas State Board of Medical Examiners shall provide to the department information in the possession of the board that the department is required to provide under Subsection (a).

(c) The department shall maintain a toll-free telephone number that a person may call to obtain the information described by Subsection (a).

(d) An abortion facility shall provide to a woman, at the time the woman initially consults the facility, a written statement indicating the number of the toll-free telephone line maintained under Subsection (c). The written statement must be available in English and Spanish and be in substantially the following form:

"(toll-free telephone number)

You have a right to access certain information concerning this abortion facility by using the toll-free telephone number listed above. If you make a call to the number, your identity will remain anonymous. The toll-free telephone line can provide you with the following information:

(1) Whether this abortion facility is licensed by the Texas Department of Health.

(2) The date of the last inspection of this facility by the Texas Department of Health and any violations of law or rules discovered during that inspection that may pose a health risk to you.

(3) Any relevant fine, penalty, or judgment rendered against this facility or a doctor who provides services at this facility."

(e) This section does not authorize the release of the name, address, or phone number of any employee or patient of an abortion facility or of a physician who provides services at an abortion facility.

Added by Acts 1997, 75th Leg., ch. 1120, Sec. 4, eff. Sept. 1, 1997.
Renumbered from Sec. 245.017 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(65), eff. Sept. 1, 1999.