

By: Schaefer

H.B. No. 3218

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of abortion, including information  
3 regarding perinatal palliative care and prohibiting discriminatory  
4 abortions; authorizing disciplinary action; providing a civil  
5 remedy; creating a criminal offense.

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

7 SECTION 1. This Act may be cited as the Preborn  
8 Nondiscrimination Act.

9 SECTION 2. The legislature finds that:

10 (1) Texas has a compelling state interest in  
11 protecting all Texans from discrimination based on sex, race, and  
12 disability; and

13 (2) Texas enforces prohibitions against  
14 discrimination based on sex, race, and disability in various areas,  
15 including housing, employment, education, insurance, and health  
16 program and service provision.

17 SECTION 3. Chapter 161, Health and Safety Code, is amended  
18 by adding Subchapter X to read as follows:

19 SUBCHAPTER X. PERINATAL PALLIATIVE CARE

20 Sec. 161.701. PURPOSE OF SUBCHAPTER. The purpose of this  
21 subchapter is to ensure that a pregnant woman who receives a  
22 diagnosis of a life-threatening disability of the woman's preborn  
23 child is informed of the availability of perinatal palliative care.

24 Sec. 161.702. DEFINITION. In this subchapter, "perinatal

1 palliative care" means the provision of comprehensive, supportive  
2 care to reduce the suffering of a pregnant woman, her preborn child,  
3 and her family, from diagnosis of the preborn child's  
4 life-threatening disability through the delivery and possible  
5 death of the child as a result of the life-threatening disability.  
6 The term includes medical, social, and mental health care,  
7 including counseling and health care provided by maternal-fetal  
8 medical specialists, obstetricians, neonatologists, anesthesia  
9 specialists, specialty nurses, clergy, social workers, and other  
10 individuals focused on alleviating fear and pain and ensuring the  
11 pregnant woman, her preborn child, and her family experience a  
12 supportive environment.

13 Sec. 161.703. PERINATAL PALLIATIVE CARE INFORMATIONAL  
14 MATERIALS. (a) The commission shall develop perinatal palliative  
15 care informational materials and post the materials on the  
16 commission's Internet website. The materials must include:

17 (1) a description of the health care and other  
18 services available through perinatal palliative care; and

19 (2) information about medical assistance benefits  
20 that may be available for prenatal care, childbirth, and perinatal  
21 palliative care.

22 (b) The commission shall develop, regularly update, and  
23 publish a geographically indexed list of all perinatal palliative  
24 care providers and programs in this state. The commission may  
25 include perinatal palliative care providers and programs in other  
26 states that provide care to residents of this state but may not  
27 include an abortion provider, as defined by Section [171.002](#), or an

1 affiliate, as defined by Section 2272.001, Government Code, as  
2 added by Chapter 501 (S.B. 22), Acts of the 86th Legislature,  
3 Regular Session, 2019, of an abortion provider. The commission  
4 shall post the list of perinatal palliative care providers and  
5 programs, including contact information, on the commission's  
6 Internet website and note the providers and programs that provide  
7 services free of charge.

8 Sec. 161.704. PERINATAL PALLIATIVE CARE CERTIFICATION  
9 FORM. The commission shall develop a form on which a pregnant woman  
10 certifies that she has received the perinatal palliative care  
11 informational materials and list of the perinatal palliative care  
12 providers and programs described by Section 161.703.

13 Sec. 161.705. HEALTH CARE PROVIDER DUTIES ON DIAGNOSIS OF  
14 PREBORN CHILD'S LIFE-THREATENING DISABILITY. A health care  
15 provider who diagnoses a pregnant woman's preborn child as having a  
16 life-threatening disability shall, at the time of the diagnosis:

17 (1) provide the pregnant woman with a written copy of:  
18 (A) the perinatal palliative care informational  
19 materials and list of the perinatal palliative care providers and  
20 programs described by Section 161.703; and

21 (B) the perinatal palliative care certification  
22 form described by Section 161.704; and

23 (2) obtain from the pregnant woman the signed  
24 perinatal palliative care certification form and place the form in  
25 the pregnant woman's medical records.

26 Sec. 161.706. EXCEPTION. A health care provider is not  
27 required to provide the perinatal palliative care informational

1 materials or perinatal palliative care certification form under  
2 this subchapter if the health care provider verifies the pregnant  
3 woman's medical record contains a signed perinatal palliative care  
4 certification form for that pregnancy as required under Section  
5 161.705(2).

6 SECTION 4. Chapter 170, Health and Safety Code, is amended  
7 by designating Sections 170.001 and 170.002 as Subchapter A and  
8 adding a subchapter heading to read as follows:

9 SUBCHAPTER A. GENERAL PROVISIONS; THIRD TRIMESTER

10 ABORTION PROHIBITED

11 SECTION 5. Section 170.001, Health and Safety Code, is  
12 amended by adding Subdivision (2-a) to read as follows:

13 (2-a) "Preborn child" means an unborn child as defined  
14 by Section 171.061.

15 SECTION 6. Section 170.002, Health and Safety Code, is  
16 amended to read as follows:

17 Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as  
18 provided by Subsection (b), a person may not intentionally or  
19 knowingly perform an abortion on a woman who is pregnant with a  
20 preborn [~~viable unborn~~] child during the third trimester of the  
21 pregnancy.

22 (b) Subsection (a) does not prohibit a person from  
23 performing an abortion if at the time of the abortion the person is  
24 a physician and concludes in good faith according to the  
25 physician's best medical judgment that[+]

26 [~~(1) the fetus is not a viable fetus and the pregnancy~~  
27 ~~is not in the third trimester,~~

1           ~~[(2)]~~ the abortion is necessary due to a medical  
2 emergency, as defined by Section 171.002 ~~[to prevent the death or a~~  
3 ~~substantial risk of serious impairment to the physical or mental~~  
4 ~~health of the woman; or~~

5           ~~[(3) the fetus has a severe and irreversible~~  
6 ~~abnormality, identified by reliable diagnostic procedures].~~

7           (c) A physician who performs an abortion that, according to  
8 the physician's best medical judgment at the time of the abortion,  
9 is to abort a preborn ~~[viable unborn]~~ child during the third  
10 trimester of the pregnancy shall certify in writing to the  
11 commission, on a form prescribed by the commission, the medical  
12 indications supporting the physician's judgment that the abortion  
13 was authorized by Subsection (b) ~~[(b)(2) or (3)]. If the physician~~  
14 ~~certifies the abortion was authorized by Subsection (b)(3), the~~  
15 ~~physician shall certify in writing on the form the fetal~~  
16 ~~abnormality identified by the physician].~~ The certification must  
17 be made not later than the 30th day after the date the abortion was  
18 performed.

19           SECTION 7. Chapter 170, Health and Safety Code, is amended  
20 by adding Subchapter B to read as follows:

21           SUBCHAPTER B. DISCRIMINATORY ABORTION PROHIBITED

22           Sec. 170.051. DEFINITION. In this subchapter, "disability"  
23 means:

24           (1) a physical or mental impairment that would  
25 substantially limit one or more of an individual's major life  
26 activities;

27           (2) an assessment referencing an individual's

1 impairment described by Subdivision (1); or  
2 (3) a physical disfigurement, scoliosis, dwarfism,  
3 Down syndrome, albinism, amelia, or any other type of physical,  
4 mental, or intellectual abnormality or disease.

5 Sec. 170.052. DISCRIMINATORY ABORTION PROHIBITED. A person  
6 may not:

7 (1) knowingly perform or attempt to perform on a  
8 pregnant woman an abortion based on the race, ethnicity, sex, or  
9 disability of the woman's preborn child, including a probability of  
10 diagnosis that the child has a disability; or

11 (2) use force or the threat of force to intentionally  
12 injure or intimidate a person to coerce the performance or  
13 attempted performance of an abortion based on the race, ethnicity,  
14 sex, or disability of the woman's preborn child, including a  
15 probability of diagnosis that the child has a disability.

16 Sec. 170.053. CRIMINAL PENALTY. (a) A person who violates  
17 Section 170.052 commits an offense. An offense under this  
18 subsection is a Class A misdemeanor.

19 (b) A woman on whom an abortion is performed or attempted in  
20 violation of Section 170.052 may not be prosecuted for a violation  
21 of that section or for conspiracy to commit a violation of that  
22 section.

23 Sec. 170.054. LICENSE SUSPENSION OR REVOCATION. A  
24 physician who violates Section 170.052 engages in unprofessional  
25 conduct for which the physician's license may be suspended or  
26 revoked under Chapter 164, Occupations Code.

27 Sec. 170.055. CIVIL REMEDIES. (a) A civil action may be

1 brought against a person who violates Section 170.052 by:

2 (1) the woman on whom an abortion was performed or  
3 attempted in violation of Section 170.052;

4 (2) the father of the preborn child for an abortion  
5 performed or attempted on a pregnant woman in violation of Section  
6 170.052, unless the woman's pregnancy resulted from the father's  
7 criminal conduct; or

8 (3) a maternal grandparent of the preborn child for an  
9 abortion performed or attempted in violation of Section 170.052 on  
10 a pregnant woman who was less than 18 years of age at the time of the  
11 violation, unless the woman's pregnancy resulted from the maternal  
12 grandparent's criminal conduct.

13 (b) A person who brings an action under this section may  
14 obtain:

15 (1) injunctive relief;

16 (2) damages incurred by the person, including:

17 (A) actual damages for all psychological,  
18 emotional, and physical injuries resulting from the violation of  
19 Section 170.052;

20 (B) court costs; and

21 (C) reasonable attorney's fees; or

22 (3) both injunctive relief and damages.

23 (c) An action for damages or injunctive relief under this  
24 section must be filed:

25 (1) in a district court in the county in which the  
26 woman on whom an abortion was performed or attempted in violation of  
27 Section 170.052 resides; and

1           (2) not later than the sixth anniversary of the date  
2 the abortion was performed or attempted in violation of Section  
3 170.052.

4           (d) The damages and injunctive relief authorized by this  
5 section are in addition to any other remedy available by law.

6           (e) A civil action under this section may not be brought  
7 against a woman on whom an abortion is performed or attempted in  
8 violation of Section 170.052.

9           SECTION 8. Section 171.002, Health and Safety Code, is  
10 amended by adding Subdivision (3-a) to read as follows:

11           (3-a) "Preborn child" means an unborn child as defined  
12 by Section 171.061.

13           SECTION 9. Section 171.012, Health and Safety Code, is  
14 amended by amending Subsection (a) and adding Subsections (g) and  
15 (h) to read as follows:

16           (a) Consent to an abortion is voluntary and informed only  
17 if:

18           (1) the physician who is to perform the abortion  
19 informs the pregnant woman on whom the abortion is to be performed  
20 of:

21                   (A) the physician's name;

22                   (B) the particular medical risks associated with  
23 the particular abortion procedure to be employed, including, when  
24 medically accurate:

25                           (i) the risks of infection and hemorrhage;

26                           (ii) the potential danger to a subsequent  
27 pregnancy and of infertility; and



1 (iii) the possibility of increased risk of  
2 breast cancer following an induced abortion and the natural  
3 protective effect of a completed pregnancy in avoiding breast  
4 cancer;

5 (C) the probable gestational age of the preborn  
6 [~~unborn~~] child at the time the abortion is to be performed; [~~and~~]

7 (D) the medical risks associated with carrying  
8 the preborn child to term; and

9 (E) the state law prohibiting abortion of a  
10 preborn child solely on the basis of the preborn child's race,  
11 ethnicity, sex, or disability as defined by Section 170.051,  
12 including a probability of diagnosis that the child has a  
13 disability;

14 (2) the physician who is to perform the abortion or the  
15 physician's agent informs the pregnant woman that:

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

18 (B) the father is liable for assistance in the  
19 support of the child without regard to whether the father has  
20 offered to pay for the abortion; and

21 (C) public and private agencies provide  
22 pregnancy prevention counseling and medical referrals for  
23 obtaining pregnancy prevention medications or devices, including  
24 emergency contraception for victims of rape or incest;

25 (3) the physician who is to perform the abortion or the  
26 physician's agent:

27 (A) provides the pregnant woman with the printed

1 materials described by Section 171.014; and

2 (B) informs the pregnant woman that those  
3 materials:

4 (i) have been provided by the Health and  
5 Human Services Commission [~~Department of State Health Services~~];

6 (ii) are accessible on an Internet website  
7 sponsored by the commission [~~department~~];

8 (iii) describe the preborn [~~unborn~~] child  
9 and list agencies that offer alternatives to abortion; and

10 (iv) include a list of agencies that offer  
11 sonogram services at no cost to the pregnant woman;

12 (4) before any sedative or anesthesia is administered  
13 to the pregnant woman and at least 24 hours before the abortion or  
14 at least two hours before the abortion if the pregnant woman waives  
15 this requirement by certifying that she currently lives 100 miles  
16 or more from the nearest abortion provider that is a facility  
17 licensed under Chapter 245 or a facility that performs more than 50  
18 abortions in any 12-month period:

19 (A) the physician who is to perform the abortion  
20 or an agent of the physician who is also a sonographer certified by  
21 a national registry of medical sonographers performs a sonogram on  
22 the pregnant woman on whom the abortion is to be performed;

23 (B) the physician who is to perform the abortion  
24 displays the sonogram images in a quality consistent with current  
25 medical practice in a manner that the pregnant woman may view them;

26 (C) the physician who is to perform the abortion  
27 provides, in a manner understandable to a layperson, a verbal

1 explanation of the results of the sonogram images, including a  
2 medical description of the dimensions of the embryo or fetus, the  
3 presence of cardiac activity, and the presence of external members  
4 and internal organs; and

5 (D) the physician who is to perform the abortion  
6 or an agent of the physician who is also a sonographer certified by  
7 a national registry of medical sonographers makes audible the heart  
8 auscultation for the pregnant woman to hear, if present, in a  
9 quality consistent with current medical practice and provides, in a  
10 manner understandable to a layperson, a simultaneous verbal  
11 explanation of the heart auscultation;

12 (5) before receiving a sonogram under Subdivision  
13 (4)(A) and before the abortion is performed and before any sedative  
14 or anesthesia is administered, the pregnant woman completes and  
15 certifies with her signature an election form that states as  
16 follows:

17 "ABORTION AND SONOGRAM ELECTION

18 (1) THE INFORMATION AND PRINTED MATERIALS  
19 DESCRIBED BY SECTIONS [171.012\(a\)\(1\)-\(3\)](#), TEXAS HEALTH  
20 AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO  
21 ME.

22 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF  
23 AN ABORTION.

24 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM  
25 PRIOR TO RECEIVING AN ABORTION.

26 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW  
27 THE SONOGRAM IMAGES.

1           (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR  
2 THE HEARTBEAT.

3           (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO  
4 HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I  
5 CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

6           \_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL  
7 ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL  
8 CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT  
9 AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I  
10 REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK  
11 OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

12           \_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN  
13 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER  
14 CHAPTER 33, TEXAS FAMILY CODE.

15           [~~\_\_\_ MY FETUS HAS AN IRREVERSIBLE MEDICAL~~  
16 ~~CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE~~  
17 ~~DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL~~  
18 ~~FILE.~~]

19           (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL  
20 AND WITHOUT COERCION.

21           (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM  
22 THE NEAREST ABORTION PROVIDER THAT IS A FACILITY  
23 LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY  
24 CODE, OR A FACILITY THAT PERFORMS MORE THAN 50  
25 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

26           I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100  
27 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT

1 IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH  
2 AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN  
3 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE  
4 REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS  
5 PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY  
6 PLACE OF RESIDENCE IS:\_\_\_\_\_.

7 \_\_\_\_\_  
8 SIGNATURE DATE";

9 (6) before the abortion is performed, the physician  
10 who is to perform the abortion receives a copy of the signed,  
11 written certification required by Subdivision (5); and

12 (7) the pregnant woman is provided the name of each  
13 person who provides or explains the information required under this  
14 subsection.

15 (g) If the pregnant woman's preborn child has been diagnosed  
16 with a life-threatening disability, the physician who is to perform  
17 the abortion shall, at least 24 hours before the abortion or at  
18 least two hours before the abortion if the pregnant woman waives  
19 this requirement by certifying that she currently lives 100 miles  
20 or more from the nearest abortion provider that is a facility  
21 licensed under Chapter 245 or a facility in which more than 50  
22 abortions are performed in any 12-month period:

23 (1) orally and in person, inform the pregnant woman of  
24 the availability of perinatal palliative care, as that term is  
25 defined by Section 161.702; and

26 (2) provide the pregnant woman with a written copy of:

27 (A) the perinatal palliative care informational

1 materials and list of the perinatal palliative care providers and  
2 programs described by Section 161.703; and

3 (B) the perinatal palliative care certification  
4 form described by Section 161.704.

5 (h) If a pregnant woman described by Subsection (g), after  
6 receiving from the physician who is to perform the abortion the  
7 perinatal palliative care informational materials and  
8 certification form described by that subsection in the manner  
9 required by that subsection, chooses to have an abortion instead of  
10 continuing the pregnancy in perinatal palliative care, the  
11 physician may perform the abortion only after:

12 (1) the pregnant woman signs the certification form;  
13 and

14 (2) the physician places the signed certification form  
15 in the pregnant woman's medical records.

16 SECTION 10. Section [171.0121](#), Health and Safety Code, is  
17 amended to read as follows:

18 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion  
19 begins, a copy of the signed, written certification received by the  
20 physician under Section [171.012](#)(a)(6) and, if applicable, under  
21 Section 161.704 must be placed in the pregnant woman's medical  
22 records.

23 (b) A copy of the signed, written certification required  
24 under Sections [171.012](#)(a)(5) and (6) and of any signed, written  
25 certification required under Section 161.704 shall be retained by  
26 the facility where the abortion is performed until:

27 (1) the seventh anniversary of the date the

1 certification [~~it~~] is signed; or

2 (2) if the pregnant woman is a minor, the later of:

3 (A) the seventh anniversary of the date the  
4 certification [~~it~~] is signed; or

5 (B) the woman's 21st birthday.

6 SECTION 11. Section 171.0122(d), Health and Safety Code, is  
7 amended to read as follows:

8 (d) A pregnant woman may choose not to receive the verbal  
9 explanation of the results of the sonogram images under Section  
10 171.012(a)(4)(C) if:

11 (1) the woman's pregnancy is a result of a sexual  
12 assault, incest, or other violation of the Penal Code that has been  
13 reported to law enforcement authorities or that has not been  
14 reported because she has a reason that she declines to reveal  
15 because she reasonably believes that to do so would put her at risk  
16 of retaliation resulting in serious bodily injury; or

17 (2) the woman is a minor and obtaining an abortion in  
18 accordance with judicial bypass procedures under Chapter 33, Family  
19 Code[~~, or~~

20 [~~(3) the fetus has an irreversible medical condition~~  
21 ~~or abnormality, as previously identified by reliable diagnostic~~  
22 ~~procedures and documented in the woman's medical file].~~

23 SECTION 12. Section 171.014(a), Health and Safety Code, is  
24 amended to read as follows:

25 (a) The department shall publish informational materials  
26 that include:

27 (1) the information required to be provided under

1 Sections 171.012(a)(1)(B), ~~[and]~~ (D), and (E) and (a)(2)(A), (B),  
2 and (C); and

3 (2) the materials required by Sections 161.703,  
4 171.015, and 171.016.

5 SECTION 13. Section 171.042, Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 171.042. DEFINITION [~~DEFINITIONS~~]. In this  
8 subchapter, ~~[÷~~

9 [~~(1)~~] "post-fertilization [~~Post-fertilization~~] age"  
10 means the age of the preborn [~~unborn~~] child as calculated from the  
11 fusion of a human spermatozoon with a human ovum.

12 [~~(2) "Severe fetal abnormality" has the meaning~~  
13 ~~assigned by Section 285.202.~~]

14 SECTION 14. Sections 171.043, 171.044, and 171.045, Health  
15 and Safety Code, are amended to read as follows:

16 Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE  
17 REQUIRED. Except as otherwise provided by Section 171.046, a  
18 physician may not perform or induce or attempt to perform or induce  
19 an abortion without, prior to the procedure:

20 (1) making a determination of the probable  
21 post-fertilization age of the preborn [~~unborn~~] child; or

22 (2) possessing and relying on a determination of the  
23 probable post-fertilization age of the preborn [~~unborn~~] child made  
24 by another physician.

25 Sec. 171.044. ABORTION OF PREBORN [~~UNBORN~~] CHILD OF 20 OR  
26 MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise  
27 provided by Section 171.046, a person may not perform or induce or



1 attempt to perform or induce an abortion on a woman if it has been  
2 determined, by the physician performing, inducing, or attempting to  
3 perform or induce the abortion or by another physician on whose  
4 determination that physician relies, that the probable  
5 post-fertilization age of the preborn [~~unborn~~] child is 20 or more  
6 weeks.

7 Sec. 171.045. METHOD OF ABORTION. (a) This section applies  
8 only to an abortion authorized under Section [171.046](#)(a)(1) or (2)  
9 in which:

10 (1) the probable post-fertilization age of the preborn  
11 [~~unborn~~] child is 20 or more weeks; or

12 (2) the probable post-fertilization age of the preborn  
13 [~~unborn~~] child has not been determined but could reasonably be 20 or  
14 more weeks.

15 (b) Except as otherwise provided by Section [171.046](#)(a)(3),  
16 a physician performing an abortion under Subsection (a) shall  
17 terminate the pregnancy in the manner that, in the physician's  
18 reasonable medical judgment, provides the best opportunity for the  
19 preborn [~~unborn~~] child to survive.

20 SECTION 15. Section [171.046](#)(a), Health and Safety Code, is  
21 amended to read as follows:

22 (a) The prohibitions and requirements under Sections  
23 [171.043](#), [171.044](#), and [171.045](#)(b) do not apply to an abortion  
24 performed if there exists a condition that, in the physician's  
25 reasonable medical judgment, so complicates the medical condition  
26 of the woman that, to avert the woman's death or a serious risk of  
27 substantial and irreversible physical impairment of a major bodily

1 function, other than a psychological condition, it necessitates, as  
2 applicable:

3 (1) the immediate abortion of her pregnancy without  
4 the delay necessary to determine the probable post-fertilization  
5 age of the preborn [~~unborn~~] child;

6 (2) the abortion of her pregnancy even though the  
7 post-fertilization age of the preborn [~~unborn~~] child is 20 or more  
8 weeks; or

9 (3) the use of a method of abortion other than a method  
10 described by Section 171.045(b).

11 SECTION 16. Section 285.202(a), Health and Safety Code, is  
12 amended to read as follows:

13 (a) In this section, "medical emergency" means[+  
14 [~~(1)~~] a condition exists that, in a physician's good  
15 faith clinical judgment, complicates the medical condition of the  
16 pregnant woman and necessitates the immediate abortion of her  
17 pregnancy to avert her death or to avoid a serious risk of  
18 substantial impairment of a major bodily function[~~, or~~  
19 [~~(2) the fetus has a severe fetal abnormality~~].

20 SECTION 17. Section 164.052(a), Occupations Code, is  
21 amended to read as follows:

22 (a) A physician or an applicant for a license to practice  
23 medicine commits a prohibited practice if that person:

24 (1) submits to the board a false or misleading  
25 statement, document, or certificate in an application for a  
26 license;

27 (2) presents to the board a license, certificate, or

1 diploma that was illegally or fraudulently obtained;

2 (3) commits fraud or deception in taking or passing an  
3 examination;

4 (4) uses alcohol or drugs in an intemperate manner  
5 that, in the board's opinion, could endanger a patient's life;

6 (5) commits unprofessional or dishonorable conduct  
7 that is likely to deceive or defraud the public, as provided by  
8 Section 164.053, or injure the public;

9 (6) uses an advertising statement that is false,  
10 misleading, or deceptive;

11 (7) advertises professional superiority or the  
12 performance of professional service in a superior manner if that  
13 advertising is not readily subject to verification;

14 (8) purchases, sells, barter, or uses, or offers to  
15 purchase, sell, barter, or use, a medical degree, license,  
16 certificate, or diploma, or a transcript of a license, certificate,  
17 or diploma in or incident to an application to the board for a  
18 license to practice medicine;

19 (9) alters, with fraudulent intent, a medical license,  
20 certificate, or diploma, or a transcript of a medical license,  
21 certificate, or diploma;

22 (10) uses a medical license, certificate, or diploma,  
23 or a transcript of a medical license, certificate, or diploma that  
24 has been:

25 (A) fraudulently purchased or issued;

26 (B) counterfeited; or

27 (C) materially altered;

1           (11) impersonates or acts as proxy for another person  
2 in an examination required by this subtitle for a medical license;

3           (12) engages in conduct that subverts or attempts to  
4 subvert an examination process required by this subtitle for a  
5 medical license;

6           (13) impersonates a physician or permits another to  
7 use the person's license or certificate to practice medicine in  
8 this state;

9           (14) directly or indirectly employs a person whose  
10 license to practice medicine has been suspended, canceled, or  
11 revoked;

12           (15) associates in the practice of medicine with a  
13 person:

14                   (A) whose license to practice medicine has been  
15 suspended, canceled, or revoked; or

16                   (B) who has been convicted of the unlawful  
17 practice of medicine in this state or elsewhere;

18           (16) performs or procures a criminal abortion, aids or  
19 abets in the procuring of a criminal abortion, attempts to perform  
20 or procure a criminal abortion, or attempts to aid or abet the  
21 performance or procurement of a criminal abortion;

22           (17) directly or indirectly aids or abets the practice  
23 of medicine by a person, partnership, association, or corporation  
24 that is not licensed to practice medicine by the board;

25           (18) performs an abortion on a woman who is pregnant  
26 with a preborn [~~viable unborn~~] child during the third trimester of  
27 the pregnancy unless[+]

1           ~~[(A)]~~ the abortion is necessary due to a medical  
2 emergency, as defined by Section 171.002, Health and Safety Code  
3 ~~[to prevent the death of the woman,~~

4           ~~[(B) the viable unborn child has a severe,~~  
5 ~~irreversible brain impairment, or~~

6           ~~[(C) the woman is diagnosed with a significant~~  
7 ~~likelihood of suffering imminent severe, irreversible brain damage~~  
8 ~~or imminent severe, irreversible paralysis];~~

9           (19) performs an abortion on an unemancipated minor  
10 without the written consent of the child's parent, managing  
11 conservator, or legal guardian or without a court order, as  
12 provided by Section 33.003 or 33.004, Family Code, unless the  
13 abortion is necessary due to a medical emergency, as defined by  
14 Section 171.002, Health and Safety Code;

15           (20) otherwise performs an abortion on an  
16 unemancipated minor in violation of Chapter 33, Family Code;

17           (21) performs or induces or attempts to perform or  
18 induce an abortion in violation of Subchapter C, F, or G, Chapter  
19 171, Health and Safety Code; ~~[or]~~

20           (22) in complying with the procedures outlined in  
21 Sections 166.045 and 166.046, Health and Safety Code, wilfully  
22 fails to make a reasonable effort to transfer a patient to a  
23 physician who is willing to comply with a directive; or

24           (23) performs or attempts to perform an abortion or  
25 engages in other conduct in violation of Section 170.052, Health  
26 and Safety Code.

27           SECTION 18. Section 164.055(b), Occupations Code, is

1 amended to read as follows:

2 (b) The sanctions provided by Subsection (a) are in addition  
3 to any other grounds for refusal to admit persons to examination  
4 under this subtitle or to issue a license or renew a license to  
5 practice medicine under this subtitle. The criminal penalties  
6 provided by Section 165.152 do not apply to a violation of Section  
7 170.002 or 170.052, Health and Safety Code, or Subchapter C, F, or  
8 G, Chapter 171, Health and Safety Code.

9 SECTION 19. The following provisions of the Health and  
10 Safety Code are repealed:

- 11 (1) Section 171.046(c); and  
12 (2) Sections 285.202(a-1) and (a-2).

13 SECTION 20. Not later than December 1, 2021:

14 (1) the Health and Human Services Commission shall:  
15 (A) develop the perinatal palliative care  
16 informational materials, list of perinatal palliative care  
17 providers and programs, and perinatal palliative care  
18 certification form required by Subchapter X, Chapter 161, Health  
19 and Safety Code, as added by this Act; and

20 (B) update any forms and informational materials  
21 under Subchapter B, Chapter 171, Health and Safety Code, as amended  
22 by this Act; and

23 (2) the executive commissioner of the Health and Human  
24 Services Commission shall adopt any rules necessary to implement  
25 Subchapter X, Chapter 161, Health and Safety Code, as added by this  
26 Act, and Subchapter B, Chapter 171, Health and Safety Code, as  
27 amended by this Act.

1           SECTION 21. (a) Subchapter X, Chapter 161, Health and  
2 Safety Code, as added by this Act, applies only to a diagnosis of a  
3 life-threatening disability of a pregnant woman's preborn child  
4 made on or after January 1, 2022.

5           (b) Chapter 170, Health and Safety Code, as amended by this  
6 Act, Subchapters B and C, Chapter 171, Health and Safety Code, as  
7 amended by this Act, and Chapter 164, Occupations Code, as amended  
8 by this Act, apply only to an abortion performed, induced, or  
9 attempted or other conduct that occurred on or after January 1,  
10 2022. An abortion performed, induced, or attempted or other  
11 conduct that occurred before that date is governed by the law in  
12 effect immediately before the effective date of this Act, and that  
13 law is continued in effect for that purpose.

14           SECTION 22. It is the intent of the legislature that every  
15 provision, section, subsection, sentence, clause, phrase, or word  
16 of this Act and every application of the provisions of this Act to  
17 each person or entity are severable from each other. If a court for  
18 any reason finds any application of any provision of this Act to any  
19 person, group of persons, or circumstances to be invalid, the  
20 remaining applications of that provision to all other persons and  
21 circumstances shall be severed and may not be affected.

22           SECTION 23. This Act takes effect September 1, 2021.