

By: Laubenberg, Flynn, Krause, Anderson,  
et al.

H.B. No. 16

Substitute the following for H.B. No. 16:

By: Cook

C.S.H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to abortion at or after 20 weeks post-fertilization.

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

SECTION 1. (a) This Act may be cited as the Preborn Pain Act.

(b) The findings indicate that:

(1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;

(2) the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

(3) the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and

(4) restricting elective abortions at or later than 20 weeks post-fertilization, as provided by this Act, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:

1 (A) the woman has adequate time to decide whether  
2 to have an abortion in the first 20 weeks after fertilization; and

3 (B) this Act does not apply to abortions that are  
4 necessary to avert the death or substantial and irreversible  
5 physical impairment of a major bodily function of the pregnant  
6 woman.

7 (c) The legislature intends that every application of this  
8 statute to every individual woman shall be severable from each  
9 other. In the unexpected event that the application of this statute  
10 is found to impose an impermissible undue burden on any pregnant  
11 woman or group of pregnant women, the application of the statute to  
12 those women shall be severed from the remaining applications of the  
13 statute that do not impose an undue burden, and those remaining  
14 applications shall remain in force and unaffected, consistent with  
15 Section 7 of this Act.

16 SECTION 2. Chapter 171, Health and Safety Code, is amended  
17 by adding Subchapter C to read as follows:

18 SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS

19 POST-FERTILIZATION

20 Sec. 171.041. DEFINITIONS. In this subchapter:

21 (1) "Post-fertilization age" means the age of the  
22 unborn child as calculated from the fusion of a human spermatozoon  
23 with a human ovum.

24 (2) "Severe fetal abnormality" has the meaning  
25 assigned by Section 285.202.

26 Sec. 171.042. DETERMINATION OF POST-FERTILIZATION AGE  
27 REQUIRED. Except as otherwise provided by Section 171.045, a

1 physician may not perform or induce or attempt to perform or induce  
2 an abortion without, prior to the procedure:

3 (1) making a determination of the probable  
4 post-fertilization age of the unborn child; or

5 (2) possessing and relying on a determination of the  
6 probable post-fertilization age of the unborn child made by another  
7 physician.

8 Sec. 171.043. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS  
9 POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by  
10 Section 171.045, a person may not perform or induce or attempt to  
11 perform or induce an abortion on a woman if it has been determined,  
12 by the physician performing, inducing, or attempting to perform or  
13 induce the abortion or by another physician on whose determination  
14 that physician relies, that the probable post-fertilization age of  
15 the unborn child is 20 or more weeks.

16 Sec. 171.044. METHOD OF ABORTION. (a) This section  
17 applies only to an abortion authorized under Section 171.045(a)(1)  
18 or (2) in which:

19 (1) the probable post-fertilization age of the unborn  
20 child is 20 or more weeks; or

21 (2) the probable post-fertilization age of the unborn  
22 child has not been determined but could reasonably be 20 or more  
23 weeks.

24 (b) Except as otherwise provided by Section 171.045(a)(3),  
25 a physician performing an abortion under Subsection (a) shall  
26 terminate the pregnancy in the manner that, in the physician's  
27 reasonable medical judgment, provides the best opportunity for the

1 unborn child to survive.

2 Sec. 171.045. EXCEPTIONS. (a) The prohibitions and  
3 requirements under Sections 171.042, 171.043, and 171.044(b) do not  
4 apply to an abortion performed if there exists a condition that, in  
5 the physician's reasonable medical judgment, so complicates the  
6 medical condition of the woman that, to avert the woman's death or a  
7 serious risk of substantial and irreversible physical impairment of  
8 a major bodily function, other than a psychological condition, it  
9 necessitates, as applicable:

10 (1) the immediate abortion of her pregnancy without  
11 the delay necessary to determine the probable post-fertilization  
12 age of the unborn child;

13 (2) the abortion of her pregnancy even though the  
14 post-fertilization age of the unborn child is 20 or more weeks; or

15 (3) the use of a method of abortion other than a method  
16 described by Section 171.044(b).

17 (b) A physician may not take an action authorized under  
18 Subsection (a) if the risk of death or a substantial and  
19 irreversible physical impairment of a major bodily function arises  
20 from a claim or diagnosis that the woman will engage in conduct that  
21 may result in her death or in substantial and irreversible physical  
22 impairment of a major bodily function.

23 (c) The prohibitions and requirements under Sections  
24 171.042, 171.043, and 171.044(b) do not apply to an abortion  
25 performed on an unborn child who has a severe fetal abnormality.

26 Sec. 171.046. PROTECTION OF PRIVACY IN COURT PROCEEDINGS.

27 (a) Except as otherwise provided by this section, in a civil or

1 criminal proceeding or action involving an act prohibited under  
2 this subchapter, the identity of the woman on whom an abortion has  
3 been performed or induced or attempted to be performed or induced is  
4 not subject to public disclosure if the woman does not give consent  
5 to disclosure.

6 (b) Unless the court makes a ruling under Subsection (c) to  
7 allow disclosure of the woman's identity, the court shall issue  
8 orders to the parties, witnesses, and counsel and shall direct the  
9 sealing of the record and exclusion of individuals from courtrooms  
10 or hearing rooms to the extent necessary to protect the woman's  
11 identity from public disclosure.

12 (c) A court may order the disclosure of information that is  
13 confidential under this section if:

14 (1) a motion is filed with the court requesting  
15 release of the information and a hearing on that request;

16 (2) notice of the hearing is served on each interested  
17 party; and

18 (3) the court determines after the hearing and an in  
19 camera review that disclosure is essential to the administration of  
20 justice and there is no reasonable alternative to disclosure.

21 Sec. 171.047. CONSTRUCTION OF SUBCHAPTER. (a) This  
22 subchapter shall be construed, as a matter of state law, to be  
23 enforceable up to but no further than the maximum possible extent  
24 consistent with federal constitutional requirements, even if that  
25 construction is not readily apparent, as such constructions are  
26 authorized only to the extent necessary to save the subchapter from  
27 judicial invalidation. Judicial reformation of statutory language

1 is explicitly authorized only to the extent necessary to save the  
2 statutory provision from invalidity.

3 (b) If any court determines that a provision of this  
4 subchapter is unconstitutionally vague, the court shall interpret  
5 the provision, as a matter of state law, to avoid the vagueness  
6 problem and shall enforce the provision to the maximum possible  
7 extent. If a federal court finds any provision of this subchapter  
8 or its application to any person, group of persons, or  
9 circumstances to be unconstitutionally vague and declines to impose  
10 the saving construction described by this subsection, the Supreme  
11 Court of Texas shall provide an authoritative construction of the  
12 objectionable statutory provisions that avoids the constitutional  
13 problems while enforcing the statute's restrictions to the maximum  
14 possible extent, and shall agree to answer any question certified  
15 from a federal appellate court regarding the statute.

16 (c) A state executive or administrative official may not  
17 decline to enforce this subchapter, or adopt a construction of this  
18 subchapter in a way that narrows its applicability, based on the  
19 official's own beliefs about what the state or federal constitution  
20 requires, unless the official is enjoined by a state or federal  
21 court from enforcing this subchapter.

22 (d) This subchapter may not be construed to authorize the  
23 prosecution of or a cause of action to be brought against a woman on  
24 whom an abortion is performed or induced or attempted to be  
25 performed or induced in violation of this subchapter.

26 SECTION 3. Section 245.011(c), Health and Safety Code, is  
27 amended to read as follows:

1 (c) The report must include:

2 (1) whether the abortion facility at which the  
3 abortion is performed is licensed under this chapter;

4 (2) the patient's year of birth, race, marital status,  
5 and state and county of residence;

6 (3) the type of abortion procedure;

7 (4) the date the abortion was performed;

8 (5) whether the patient survived the abortion, and if  
9 the patient did not survive, the cause of death;

10 (6) the probable post-fertilization age of the unborn  
11 child [~~period of gestation~~] based on the best medical judgment of  
12 the attending physician at the time of the procedure;

13 (7) the date, if known, of the patient's last menstrual  
14 cycle;

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

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

19 SECTION 4. Section 164.052(a), Occupations Code, is amended  
20 to read as follows:

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

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

26 (2) presents to the board a license, certificate, or  
27 diploma that was illegally or fraudulently obtained;

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

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

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

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

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

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

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

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

24                   (A) fraudulently purchased or issued;

25                   (B) counterfeited; or

26                   (C) materially altered;

27          (11) impersonates or acts as proxy for another person



1 in an examination required by this subtitle for a medical license;

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

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

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

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

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

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

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

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

24 (18) performs an abortion on a woman who is pregnant  
25 with a viable unborn child during the third trimester of the  
26 pregnancy unless:

27 (A) the abortion is necessary to prevent the

1 death of the woman;

2 (B) the viable unborn child has a severe,  
3 irreversible brain impairment; or

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

7 (19) performs an abortion on an unemancipated minor  
8 without the written consent of the child's parent, managing  
9 conservator, or legal guardian or without a court order, as  
10 provided by Section 33.003 or 33.004, Family Code, authorizing the  
11 minor to consent to the abortion, unless the physician concludes  
12 that on the basis of the physician's good faith clinical judgment, a  
13 condition exists that complicates the medical condition of the  
14 pregnant minor and necessitates the immediate abortion of her  
15 pregnancy to avert her death or to avoid a serious risk of  
16 substantial impairment of a major bodily function and that there is  
17 insufficient time to obtain the consent of the child's parent,  
18 managing conservator, or legal guardian; or

19 (20) performs or induces or attempts to perform or  
20 induce an abortion in violation of Subchapter C, Chapter 171,  
21 Health and Safety Code.

22 SECTION 5. Section 164.055(b), Occupations Code, is amended  
23 to read as follows:

24 (b) The sanctions provided by Subsection (a) are in addition  
25 to any other grounds for refusal to admit persons to examination  
26 under this subtitle or to issue a license or renew a license to  
27 practice medicine under this subtitle. The criminal penalties

1 provided by Section 165.152 do not apply to a violation of Section  
2 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

3 SECTION 6. This Act may not be construed to repeal, by  
4 implication or otherwise, Section 164.052(a)(18), Occupations  
5 Code, Section 170.002, Health and Safety Code, or any other  
6 provision of Texas law regulating or restricting abortion not  
7 specifically addressed by this Act. An abortion that complies with  
8 this Act but violates any other law is unlawful. An abortion that  
9 complies with another state law but violates this Act is unlawful as  
10 provided in this Act.

11 SECTION 7. (a) If some or all of the provisions of this Act  
12 are ever temporarily or permanently restrained or enjoined by  
13 judicial order, all other provisions of Texas law regulating or  
14 restricting abortion shall be enforced as though the restrained or  
15 enjoined provisions had not been adopted; provided, however, that  
16 whenever the temporary or permanent restraining order or injunction  
17 is stayed or dissolved, or otherwise ceases to have effect, the  
18 provisions shall have full force and effect.

19 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in  
20 which in the context of determining the severability of a state  
21 statute regulating abortion the United States Supreme Court held  
22 that an explicit statement of legislative intent is controlling, it  
23 is the intent of the legislature that every provision, section,  
24 subsection, sentence, clause, phrase, or word in this Act, and  
25 every application of the provisions in this Act, are severable from  
26 each other. If any application of any provision in this Act to any  
27 person, group of persons, or circumstances is found by a court to be

1 invalid, the remaining applications of that provision to all other  
2 persons and circumstances shall be severed and may not be affected.  
3 All constitutionally valid applications of this Act shall be  
4 severed from any applications that a court finds to be invalid,  
5 leaving the valid applications in force, because it is the  
6 legislature's intent and priority that the valid applications be  
7 allowed to stand alone. Even if a reviewing court finds a provision  
8 of this Act to impose an undue burden in a large or substantial  
9 fraction of relevant cases, the applications that do not present an  
10 undue burden shall be severed from the remaining provisions and  
11 shall remain in force, and shall be treated as if the legislature  
12 had enacted a statute limited to the persons, group of persons, or  
13 circumstances for which the statute's application does not present  
14 an undue burden. The legislature further declares that it would  
15 have passed this Act, and each provision, section, subsection,  
16 sentence, clause, phrase, or word, and all constitutional  
17 applications of this Act, irrespective of the fact that any  
18 provision, section, subsection, sentence, clause, phrase, or word,  
19 or applications of this Act, were to be declared unconstitutional  
20 or to represent an undue burden.

21 (c) If Subchapter C, Chapter 171, Health and Safety Code, as  
22 added by this Act, prohibiting abortions performed on an unborn  
23 child 20 or more weeks after fertilization is found by any court to  
24 be invalid or to impose an undue burden as applied to any person,  
25 group of persons, or circumstances, the prohibition shall apply to  
26 that person or group of persons or circumstances on the earliest  
27 date on which the subchapter can be constitutionally applied.

1           (d) If any provision of this Act is found by any court to be  
2 unconstitutionally vague, then the applications of that provision  
3 that do not present constitutional vagueness problems shall be  
4 severed and remain in force.

5           SECTION 8. This Act takes effect immediately if it receives  
6 a vote of two-thirds of all the members elected to each house, as  
7 provided by Section 39, Article III, Texas Constitution. If this  
8 Act does not receive the vote necessary for immediate effect, this  
9 Act takes effect on the 91st day after the last day of the  
10 legislative session.