

By: Laubenberg

H.B. No. 16

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

6 (b) The legislature finds that:

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

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

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

21 (4) restricting elective abortions at or later than 20  
22 weeks post-fertilization, as provided by this Act, does not impose  
23 an undue burden or a substantial obstacle on a woman's ability to  
24 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) "Profound and irremediable congenital anomaly"  
25 means a congenital anomaly that, in a physician's reasonable  
26 medical judgment, will result in the death of the infant not later  
27 than minutes to hours after birth regardless of the provision of

1 lifesaving medical treatment.

2 Sec. 171.042. DETERMINATION OF POST-FERTILIZATION AGE  
3 REQUIRED. Except as otherwise provided by Section 171.045, a  
4 physician may not perform or induce or attempt to perform or induce  
5 an abortion without, prior to the procedure:

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

8 (2) possessing and relying on a determination of the  
9 probable post-fertilization age of the unborn child made by another  
10 physician.

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

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

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

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

27 (b) Except as otherwise provided by Section 171.045(a)(3),

1 a physician performing an abortion under Subsection (a) shall  
2 terminate the pregnancy in the manner that, in the physician's  
3 reasonable medical judgment, provides the best opportunity for the  
4 unborn child to survive.

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

13 (1) the immediate abortion of her pregnancy without  
14 the delay necessary to determine the probable post-fertilization  
15 age of the unborn child;

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

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

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

26 (c) The prohibitions and requirements under Sections  
27 171.042, 171.043, and 171.044 do not apply to an abortion performed

1 on an unborn child who has a profound and irremediable congenital  
2 anomaly.

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

4 (a) Except as otherwise provided by this section, in a civil or  
5 criminal proceeding or action involving an act prohibited under  
6 this subchapter, the identity of the woman on whom an abortion has  
7 been performed or induced or attempted to be performed or induced is  
8 not subject to public disclosure if the woman does not give consent  
9 to disclosure.

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

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

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

20 (2) notice of the hearing is served on each interested  
21 party; and

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

25 Sec. 171.047. CONSTRUCTION OF SUBCHAPTER. (a) This  
26 subchapter shall be construed, as a matter of state law, to be  
27 enforceable up to but no further than the maximum possible extent

1 consistent with federal constitutional requirements, even if that  
2 construction is not readily apparent, as such constructions are  
3 authorized only to the extent necessary to save the subchapter from  
4 judicial invalidation. Judicial reformation of statutory language  
5 is explicitly authorized only to the extent necessary to save the  
6 statutory provision from invalidity.

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

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

26 (d) This subchapter may not be construed to authorize the  
27 prosecution of or a cause of action to be brought against a woman on

1 whom an abortion is performed or induced or attempted to be  
2 performed or induced in violation of this subchapter.

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

5 (c) The report must include:

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

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

10 (3) the type of abortion procedure;

11 (4) the date the abortion was performed;

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

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

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

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

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

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

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

27 (1) submits to the board a false or misleading

1 statement, document, or certificate in an application for a  
2 license;

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

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

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

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

12 (6) uses an advertising statement that is false,  
13 misleading, or deceptive;

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

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

22 (9) alters, with fraudulent intent, a medical license,  
23 certificate, or diploma, or a transcript of a medical license,  
24 certificate, or diploma;

25 (10) uses a medical license, certificate, or diploma,  
26 or a transcript of a medical license, certificate, or diploma that  
27 has been:



- 1 (A) fraudulently purchased or issued;
- 2 (B) counterfeited; or
- 3 (C) materially altered;
- 4 (11) impersonates or acts as proxy for another person
- 5 in an examination required by this subtitle for a medical license;
- 6 (12) engages in conduct that subverts or attempts to
- 7 subvert an examination process required by this subtitle for a
- 8 medical license;
- 9 (13) impersonates a physician or permits another to
- 10 use the person's license or certificate to practice medicine in
- 11 this state;
- 12 (14) directly or indirectly employs a person whose
- 13 license to practice medicine has been suspended, canceled, or
- 14 revoked;
- 15 (15) associates in the practice of medicine with a
- 16 person:
- 17 (A) whose license to practice medicine has been
- 18 suspended, canceled, or revoked; or
- 19 (B) who has been convicted of the unlawful
- 20 practice of medicine in this state or elsewhere;
- 21 (16) performs or procures a criminal abortion, aids or
- 22 abets in the procuring of a criminal abortion, attempts to perform
- 23 or procure a criminal abortion, or attempts to aid or abet the
- 24 performance or procurement of a criminal abortion;
- 25 (17) directly or indirectly aids or abets the practice
- 26 of medicine by a person, partnership, association, or corporation
- 27 that is not licensed to practice medicine by the board;

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

4                   (A) the abortion is necessary to prevent the  
5 death of the woman;

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

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

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

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

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

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

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

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

23 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in  
24 which in the context of determining the severability of a state  
25 statute regulating abortion the United States Supreme Court held  
26 that an explicit statement of legislative intent is controlling, it  
27 is the intent of the legislature that every provision, section,

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

25 (c) If Subchapter C, Chapter 171, Health and Safety Code, as  
26 added by this Act, prohibiting abortions performed on an unborn  
27 child 20 or more weeks after fertilization is found by any court to

1 be invalid or to impose an undue burden as applied to any person,  
2 group of persons, or circumstances, the prohibition shall apply to  
3 that person or group of persons or circumstances on the earliest  
4 date on which the subchapter can be constitutionally applied.

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

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