

By: Hegar

S.B. No. 13

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 legislature finds 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) "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.