

1-1 By: Hegar S.B. No. 13
 1-2 (In the Senate - Filed May 29, 2013; June 11, 2013, read
 1-3 first time and referred to Committee on Health and Human Services;
 1-4 June 14, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 1; June 14, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16		X		
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 13 By: Taylor

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to abortion at or after 20 weeks post-fertilization.
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-23 SECTION 1. (a) This Act may be cited as the Preborn Pain
 1-24 Act.
 1-25 (b) The findings indicate that:
 1-26 (1) substantial medical evidence recognizes that an
 1-27 unborn child is capable of experiencing pain by not later than 20
 1-28 weeks after fertilization;
 1-29 (2) the state has a compelling state interest in
 1-30 protecting the lives of unborn children from the stage at which
 1-31 substantial medical evidence indicates that these children are
 1-32 capable of feeling pain;
 1-33 (3) the compelling state interest in protecting the
 1-34 lives of unborn children from the stage at which substantial
 1-35 medical evidence indicates that an unborn child is capable of
 1-36 feeling pain is intended to be separate from and independent of the
 1-37 compelling state interest in protecting the lives of unborn
 1-38 children from the stage of viability, and neither state interest is
 1-39 intended to replace the other; and
 1-40 (4) restricting elective abortions at or later than 20
 1-41 weeks post-fertilization, as provided by this Act, does not impose
 1-42 an undue burden or a substantial obstacle on a woman's ability to
 1-43 have an abortion because:
 1-44 (A) the woman has adequate time to decide whether
 1-45 to have an abortion in the first 20 weeks after fertilization; and
 1-46 (B) this Act does not apply to abortions that are
 1-47 necessary to avert the death or substantial and irreversible
 1-48 physical impairment of a major bodily function of the pregnant
 1-49 woman.
 1-50 (c) The legislature intends that every application of this
 1-51 statute to every individual woman shall be severable from each
 1-52 other. In the unexpected event that the application of this statute
 1-53 is found to impose an impermissible undue burden on any pregnant
 1-54 woman or group of pregnant women, the application of the statute to
 1-55 those women shall be severed from the remaining applications of the
 1-56 statute that do not impose an undue burden, and those remaining
 1-57 applications shall remain in force and unaffected, consistent with
 1-58 Section 7 of this Act.
 1-59 SECTION 2. Chapter 171, Health and Safety Code, is amended
 1-60 by adding Subchapter C to read as follows:

2-1 SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS

2-2 POST-FERTILIZATION

2-3 Sec. 171.041. DEFINITIONS. In this subchapter:

2-4 (1) "Post-fertilization age" means the age of the
 2-5 unborn child as calculated from the fusion of a human spermatozoon
 2-6 with a human ovum.

2-7 (2) "Severe fetal abnormality" has the meaning
 2-8 assigned by Section 285.202.

2-9 Sec. 171.042. DETERMINATION OF POST-FERTILIZATION AGE
 2-10 REQUIRED. Except as otherwise provided by Section 171.045, a
 2-11 physician may not perform or induce or attempt to perform or induce
 2-12 an abortion without, prior to the procedure:

2-13 (1) making a determination of the probable
 2-14 post-fertilization age of the unborn child; or

2-15 (2) possessing and relying on a determination of the
 2-16 probable post-fertilization age of the unborn child made by another
 2-17 physician.

2-18 Sec. 171.043. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS
 2-19 POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by
 2-20 Section 171.045, a person may not perform or induce or attempt to
 2-21 perform or induce an abortion on a woman if it has been determined,
 2-22 by the physician performing, inducing, or attempting to perform or
 2-23 induce the abortion or by another physician on whose determination
 2-24 that physician relies, that the probable post-fertilization age of
 2-25 the unborn child is 20 or more weeks.

2-26 Sec. 171.044. METHOD OF ABORTION. (a) This section
 2-27 applies only to an abortion authorized under Section 171.045(a)(1)
 2-28 or (2) in which:

2-29 (1) the probable post-fertilization age of the unborn
 2-30 child is 20 or more weeks; or

2-31 (2) the probable post-fertilization age of the unborn
 2-32 child has not been determined but could reasonably be 20 or more
 2-33 weeks.

2-34 (b) Except as otherwise provided by Section 171.045(a)(3),
 2-35 a physician performing an abortion under Subsection (a) shall
 2-36 terminate the pregnancy in the manner that, in the physician's
 2-37 reasonable medical judgment, provides the best opportunity for the
 2-38 unborn child to survive.

2-39 Sec. 171.045. EXCEPTIONS. (a) The prohibitions and
 2-40 requirements under Sections 171.042, 171.043, and 171.044 do not
 2-41 apply to an abortion performed if there exists a condition that, in
 2-42 the physician's reasonable medical judgment, so complicates the
 2-43 medical condition of the woman that, to avert the woman's death or a
 2-44 serious risk of substantial and irreversible physical impairment of
 2-45 a major bodily function, other than a psychological condition, it
 2-46 necessitates, as applicable:

2-47 (1) the immediate abortion of her pregnancy without
 2-48 the delay necessary to determine the probable post-fertilization
 2-49 age of the unborn child;

2-50 (2) the abortion of her pregnancy even though the
 2-51 post-fertilization age of the unborn child is 20 or more weeks; or

2-52 (3) the use of a method of abortion other than a method
 2-53 described by Section 171.044(b).

2-54 (b) A physician may not take an action authorized under
 2-55 Subsection (a) if the risk of death or a substantial and
 2-56 irreversible physical impairment of a major bodily function arises
 2-57 from a claim or diagnosis that the woman will engage in conduct that
 2-58 may result in her death or in substantial and irreversible physical
 2-59 impairment of a major bodily function.

2-60 (c) The prohibitions and requirements under Sections
 2-61 171.042, 171.043, and 171.044 do not apply to an abortion performed
 2-62 on an unborn child who has a severe fetal abnormality.

2-63 Sec. 171.046. PROTECTION OF PRIVACY IN COURT PROCEEDINGS.

2-64 (a) Except as otherwise provided by this section, in a civil or
 2-65 criminal proceeding or action involving an act prohibited under
 2-66 this subchapter, the identity of the woman on whom an abortion has
 2-67 been performed or induced or attempted to be performed or induced is
 2-68 not subject to public disclosure if the woman does not give consent
 2-69 to disclosure.

3-1 (b) Unless the court makes a ruling under Subsection (c) to
 3-2 allow disclosure of the woman's identity, the court shall issue
 3-3 orders to the parties, witnesses, and counsel and shall direct the
 3-4 sealing of the record and exclusion of individuals from courtrooms
 3-5 or hearing rooms to the extent necessary to protect the woman's
 3-6 identity from public disclosure.

3-7 (c) A court may order the disclosure of information that is
 3-8 confidential under this section if:

3-9 (1) a motion is filed with the court requesting
 3-10 release of the information and a hearing on that request;

3-11 (2) notice of the hearing is served on each interested
 3-12 party; and

3-13 (3) the court determines after the hearing and an in
 3-14 camera review that disclosure is essential to the administration of
 3-15 justice and there is no reasonable alternative to disclosure.

3-16 Sec. 171.047. CONSTRUCTION OF SUBCHAPTER. (a) This
 3-17 subchapter shall be construed, as a matter of state law, to be
 3-18 enforceable up to but no further than the maximum possible extent
 3-19 consistent with federal constitutional requirements, even if that
 3-20 construction is not readily apparent, as such constructions are
 3-21 authorized only to the extent necessary to save the subchapter from
 3-22 judicial invalidation. Judicial reformation of statutory language
 3-23 is explicitly authorized only to the extent necessary to save the
 3-24 statutory provision from invalidity.

3-25 (b) If any court determines that a provision of this
 3-26 subchapter is unconstitutionally vague, the court shall interpret
 3-27 the provision, as a matter of state law, to avoid the vagueness
 3-28 problem and shall enforce the provision to the maximum possible
 3-29 extent. If a federal court finds any provision of this subchapter
 3-30 or its application to any person, group of persons, or
 3-31 circumstances to be unconstitutionally vague and declines to impose
 3-32 the saving construction described by this subsection, the Supreme
 3-33 Court of Texas shall provide an authoritative construction of the
 3-34 objectionable statutory provisions that avoids the constitutional
 3-35 problems while enforcing the statute's restrictions to the maximum
 3-36 possible extent, and shall agree to answer any question certified
 3-37 from a federal appellate court regarding the statute.

3-38 (c) A state executive or administrative official may not
 3-39 decline to enforce this subchapter, or adopt a construction of this
 3-40 subchapter in a way that narrows its applicability, based on the
 3-41 official's own beliefs about what the state or federal constitution
 3-42 requires, unless the official is enjoined by a state or federal
 3-43 court from enforcing this subchapter.

3-44 (d) This subchapter may not be construed to authorize the
 3-45 prosecution of or a cause of action to be brought against a woman on
 3-46 whom an abortion is performed or induced or attempted to be
 3-47 performed or induced in violation of this subchapter.

3-48 SECTION 3. Subsection (c), Section 245.011, Health and
 3-49 Safety Code, is amended to read as follows:

3-50 (c) The report must include:

3-51 (1) whether the abortion facility at which the
 3-52 abortion is performed is licensed under this chapter;

3-53 (2) the patient's year of birth, race, marital status,
 3-54 and state and county of residence;

3-55 (3) the type of abortion procedure;

3-56 (4) the date the abortion was performed;

3-57 (5) whether the patient survived the abortion, and if
 3-58 the patient did not survive, the cause of death;

3-59 (6) the probable post-fertilization age of the unborn
 3-60 child [~~period of gestation~~] based on the best medical judgment of
 3-61 the attending physician at the time of the procedure;

3-62 (7) the date, if known, of the patient's last menstrual
 3-63 cycle;

3-64 (8) the number of previous live births of the patient;
 3-65 and

3-66 (9) the number of previous induced abortions of the
 3-67 patient.

3-68 SECTION 4. Subsection (a), Section 164.052, Occupations
 3-69 Code, is amended to read as follows:

- 4-1 (a) A physician or an applicant for a license to practice
4-2 medicine commits a prohibited practice if that person:
- 4-3 (1) submits to the board a false or misleading
4-4 statement, document, or certificate in an application for a
4-5 license;
- 4-6 (2) presents to the board a license, certificate, or
4-7 diploma that was illegally or fraudulently obtained;
- 4-8 (3) commits fraud or deception in taking or passing an
4-9 examination;
- 4-10 (4) uses alcohol or drugs in an intemperate manner
4-11 that, in the board's opinion, could endanger a patient's life;
- 4-12 (5) commits unprofessional or dishonorable conduct
4-13 that is likely to deceive or defraud the public, as provided by
4-14 Section 164.053, or injure the public;
- 4-15 (6) uses an advertising statement that is false,
4-16 misleading, or deceptive;
- 4-17 (7) advertises professional superiority or the
4-18 performance of professional service in a superior manner if that
4-19 advertising is not readily subject to verification;
- 4-20 (8) purchases, sells, barter, or uses, or offers to
4-21 purchase, sell, barter, or use, a medical degree, license,
4-22 certificate, or diploma, or a transcript of a license, certificate,
4-23 or diploma in or incident to an application to the board for a
4-24 license to practice medicine;
- 4-25 (9) alters, with fraudulent intent, a medical license,
4-26 certificate, or diploma, or a transcript of a medical license,
4-27 certificate, or diploma;
- 4-28 (10) uses a medical license, certificate, or diploma,
4-29 or a transcript of a medical license, certificate, or diploma that
4-30 has been:
- 4-31 (A) fraudulently purchased or issued;
4-32 (B) counterfeited; or
4-33 (C) materially altered;
- 4-34 (11) impersonates or acts as proxy for another person
4-35 in an examination required by this subtitle for a medical license;
- 4-36 (12) engages in conduct that subverts or attempts to
4-37 subvert an examination process required by this subtitle for a
4-38 medical license;
- 4-39 (13) impersonates a physician or permits another to
4-40 use the person's license or certificate to practice medicine in
4-41 this state;
- 4-42 (14) directly or indirectly employs a person whose
4-43 license to practice medicine has been suspended, canceled, or
4-44 revoked;
- 4-45 (15) associates in the practice of medicine with a
4-46 person:
- 4-47 (A) whose license to practice medicine has been
4-48 suspended, canceled, or revoked; or
4-49 (B) who has been convicted of the unlawful
4-50 practice of medicine in this state or elsewhere;
- 4-51 (16) performs or procures a criminal abortion, aids or
4-52 abets in the procuring of a criminal abortion, attempts to perform
4-53 or procure a criminal abortion, or attempts to aid or abet the
4-54 performance or procurement of a criminal abortion;
- 4-55 (17) directly or indirectly aids or abets the practice
4-56 of medicine by a person, partnership, association, or corporation
4-57 that is not licensed to practice medicine by the board;
- 4-58 (18) performs an abortion on a woman who is pregnant
4-59 with a viable unborn child during the third trimester of the
4-60 pregnancy unless:
- 4-61 (A) the abortion is necessary to prevent the
4-62 death of the woman;
- 4-63 (B) the viable unborn child has a severe,
4-64 irreversible brain impairment; or
4-65 (C) the woman is diagnosed with a significant
4-66 likelihood of suffering imminent severe, irreversible brain damage
4-67 or imminent severe, irreversible paralysis; [~~or~~]
- 4-68 (19) performs an abortion on an unemancipated minor
4-69 without the written consent of the child's parent, managing

5-1 conservator, or legal guardian or without a court order, as
 5-2 provided by Section 33.003 or 33.004, Family Code, authorizing the
 5-3 minor to consent to the abortion, unless the physician concludes
 5-4 that on the basis of the physician's good faith clinical judgment, a
 5-5 condition exists that complicates the medical condition of the
 5-6 pregnant minor and necessitates the immediate abortion of her
 5-7 pregnancy to avert her death or to avoid a serious risk of
 5-8 substantial impairment of a major bodily function and that there is
 5-9 insufficient time to obtain the consent of the child's parent,
 5-10 managing conservator, or legal guardian; or

5-11 (20) performs or induces or attempts to perform or
 5-12 induce an abortion in violation of Subchapter C, Chapter 171,
 5-13 Health and Safety Code.

5-14 SECTION 5. Subsection (b), Section 164.055, Occupations
 5-15 Code, is amended to read as follows:

5-16 (b) The sanctions provided by Subsection (a) are in addition
 5-17 to any other grounds for refusal to admit persons to examination
 5-18 under this subtitle or to issue a license or renew a license to
 5-19 practice medicine under this subtitle. The criminal penalties
 5-20 provided by Section 165.152 do not apply to a violation of Section
 5-21 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

5-22 SECTION 6. This Act may not be construed to repeal, by
 5-23 implication or otherwise, Subdivision (18), Subsection (a),
 5-24 Section 164.052, Occupations Code, Section 170.002, Health and
 5-25 Safety Code, or any other provision of Texas law regulating or
 5-26 restricting abortion not specifically addressed by this Act. An
 5-27 abortion that complies with this Act but violates any other law is
 5-28 unlawful. An abortion that complies with another state law but
 5-29 violates this Act is unlawful as provided in this Act.

5-30 SECTION 7. (a) If some or all of the provisions of this Act
 5-31 are ever temporarily or permanently restrained or enjoined by
 5-32 judicial order, all other provisions of Texas law regulating or
 5-33 restricting abortion shall be enforced as though the restrained or
 5-34 enjoined provisions had not been adopted; provided, however, that
 5-35 whenever the temporary or permanent restraining order or injunction
 5-36 is stayed or dissolved, or otherwise ceases to have effect, the
 5-37 provisions shall have full force and effect.

5-38 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in
 5-39 which in the context of determining the severability of a state
 5-40 statute regulating abortion the United States Supreme Court held
 5-41 that an explicit statement of legislative intent is controlling, it
 5-42 is the intent of the legislature that every provision, section,
 5-43 subsection, sentence, clause, phrase, or word in this Act, and
 5-44 every application of the provisions in this Act, are severable from
 5-45 each other. If any application of any provision in this Act to any
 5-46 person, group of persons, or circumstances is found by a court to be
 5-47 invalid, the remaining applications of that provision to all other
 5-48 persons and circumstances shall be severed and may not be affected.
 5-49 All constitutionally valid applications of this Act shall be
 5-50 severed from any applications that a court finds to be invalid,
 5-51 leaving the valid applications in force, because it is the
 5-52 legislature's intent and priority that the valid applications be
 5-53 allowed to stand alone. Even if a reviewing court finds a provision
 5-54 of this Act to impose an undue burden in a large or substantial
 5-55 fraction of relevant cases, the applications that do not present an
 5-56 undue burden shall be severed from the remaining provisions and
 5-57 shall remain in force, and shall be treated as if the legislature
 5-58 had enacted a statute limited to the persons, group of persons, or
 5-59 circumstances for which the statute's application does not present
 5-60 an undue burden. The legislature further declares that it would
 5-61 have passed this Act, and each provision, section, subsection,
 5-62 sentence, clause, phrase, or word, and all constitutional
 5-63 applications of this Act, irrespective of the fact that any
 5-64 provision, section, subsection, sentence, clause, phrase, or word,
 5-65 or applications of this Act, were to be declared unconstitutional
 5-66 or to represent an undue burden.

5-67 (c) If Subchapter C, Chapter 171, Health and Safety Code, as
 5-68 added by this Act, prohibiting abortions performed on an unborn
 5-69 child 20 or more weeks after fertilization is found by any court to

6-1 be invalid or to impose an undue burden as applied to any person,
6-2 group of persons, or circumstances, the prohibition shall apply to
6-3 that person or group of persons or circumstances on the earliest
6-4 date on which the subchapter can be constitutionally applied.

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

6-9 SECTION 8. This Act takes effect immediately if it receives
6-10 a vote of two-thirds of all the members elected to each house, as
6-11 provided by Section 39, Article III, Texas Constitution. If this
6-12 Act does not receive the vote necessary for immediate effect, this
6-13 Act takes effect on the 91st day after the last day of the
6-14 legislative session.

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6-15