

By: King of Parker

H.B. No. 59

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a prohibition on abortion after detection of a fetal  
3 heartbeat; providing penalties.

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

5 SECTION 1. The legislature finds, according to contemporary  
6 medical research, that:

7 (1) as many as 30 percent of natural pregnancies end in  
8 spontaneous miscarriage;

9 (2) less than five percent of all natural pregnancies  
10 end in spontaneous miscarriage after detection of fetal cardiac  
11 activity;

12 (3) over 90 percent of in vitro pregnancies survive  
13 the first trimester if cardiac activity is detected in the  
14 gestational sac;

15 (4) nearly 90 percent of in vitro pregnancies do not  
16 survive the first trimester if cardiac activity is not detected in  
17 the gestational sac;

18 (5) fetal heartbeat, therefore, has become a key  
19 medical predictor that an unborn child will reach live birth;

20 (6) cardiac activity begins at a biologically  
21 identifiable moment in time, normally when the fetal heart is  
22 formed in the gestational sac;

23 (7) the state has legitimate interests from the outset  
24 of the pregnancy in protecting the health of the woman and the life

1 of an unborn child who may be born; and

2 (8) to make an informed choice about whether to  
3 continue her pregnancy, the pregnant woman has a legitimate  
4 interest in knowing the likelihood of the fetus surviving to  
5 full-term birth based on the presence of cardiac activity.

6 SECTION 2. Chapter 171, Health and Safety Code, is amended  
7 by adding Subchapter E to read as follows:

8 SUBCHAPTER E. ABORTION AFTER DETECTION OF FETAL HEARTBEAT

9 Sec. 171.101. FINDING BY ATTORNEY GENERAL ON ENFORCEABILITY  
10 AND APPLICABILITY OF CERTAIN LAW. (a) This subchapter is not  
11 enforceable until the 91st day after the date of publication in the  
12 Texas Register of a finding of fact made by the attorney general  
13 that:

14 (1) the United States Supreme Court has issued a  
15 decision overruling *Roe v. Wade*, 410 U.S. 113 (1973);

16 (2) any other state or federal court has issued an  
17 order or judgment restoring, expanding, or clarifying the authority  
18 of states to wholly or partly prohibit or regulate abortion under  
19 the United States Constitution; or

20 (3) an amendment to the United States Constitution  
21 that restores, expands, or clarifies the authority of states to  
22 wholly or partly prohibit or regulate abortion has been adopted.

23 (b) The attorney general shall monitor federal  
24 constitutional law and state and federal court cases related to  
25 abortions in this state to determine whether a finding is required  
26 under Subsection (a). The attorney general shall make the finding  
27 required under Subsection (a) not later than the 30th day after the

1 date the attorney general determines the finding is required.

2 (c) On the 91st day after the publication date of the  
3 finding described by Subsection (a), Subchapter C has no effect.

4 (d) This subchapter applies only to an offense committed on  
5 or after the date described by Subsection (c). For purposes of this  
6 subchapter, an offense is committed before that date if any element  
7 of the offense occurs before that date. An offense committed before  
8 that date is governed by the law in effect on the date the offense  
9 was committed, and the former law is continued in effect for that  
10 purpose.

11 Sec. 171.102. DEFINITIONS. In this subchapter:

12 (1) "Conception" means fertilization.

13 (2) "Contraceptive" means a drug, device, or chemical  
14 that prevents conception.

15 (3) "Fetal heartbeat" means cardiac activity or the  
16 steady and repetitive rhythmic contraction of the fetal heart  
17 within the gestational sac.

18 (4) "Fetus" means the human offspring developing  
19 during pregnancy from the moment of conception and includes the  
20 embryonic stage of development.

21 (5) "Gestational age" has the meaning assigned by  
22 Section 171.061.

23 (6) "Intrauterine pregnancy" means a pregnancy in  
24 which the fetus is attached to the placenta within the uterus of the  
25 pregnant woman.

26 (7) "Medical emergency" means a condition that in a  
27 physician's good faith medical judgment, based on the facts known

1 to the physician at that time, so endangers the life of the pregnant  
2 woman, or so poses a serious risk of complicating the pregnancy of  
3 the woman by directly or indirectly causing the substantial and  
4 irreversible impairment of a major bodily function of the pregnant  
5 woman, as to necessitate the immediate performance or inducement of  
6 an abortion.

7 (8) "Physician" means an individual licensed to  
8 practice medicine in this state.

9 (9) "Pregnancy" means the human female reproductive  
10 condition that begins with fertilization, when the woman is  
11 carrying the developing human offspring, and that is calculated  
12 from the first day of the last menstrual period of the woman.

13 (10) "Spontaneous miscarriage" means the natural or  
14 accidental termination of a pregnancy and the expulsion of the  
15 fetus, typically caused by genetic defects in the fetus or physical  
16 abnormalities in the pregnant woman.

17 (11) "Standard medical practice" means the degree of  
18 skill, care, and diligence that a physician of the same medical  
19 specialty would employ in like circumstances. As applied to the  
20 method used to determine the presence of a fetal heartbeat for  
21 purposes of Section 171.103, "standard medical practice" includes  
22 employing the appropriate means of detection depending on the  
23 estimated gestational age of the fetus and the condition of the  
24 woman and her pregnancy.

25 (12) "Unborn child" has the meaning assigned by  
26 Section 171.061.

27 Sec. 171.103. DETERMINATION OF DETECTABLE HEARTBEAT

1 REQUIRED. (a) Except as otherwise provided by Section 171.105, a  
2 physician may not perform or induce or attempt to perform or induce  
3 an abortion unless the physician has made a determination, in  
4 accordance with Subsection (c) and standard medical practice, of  
5 whether the unborn child has a detectable heartbeat.

6 (b) The physician who makes the determination on the  
7 presence or absence of a fetal heartbeat shall record in the  
8 pregnant woman's medical record:

9 (1) the estimated gestational age of the unborn child;

10 (2) the method used to test for the presence or absence  
11 of a fetal heartbeat;

12 (3) the date and time of the test used to determine the  
13 presence or absence of a fetal heartbeat; and

14 (4) the results of the test.

15 (c) The method of determining the presence or absence of a  
16 fetal heartbeat must be consistent with the physician's good faith  
17 understanding of standard medical practice in accordance with any  
18 rules adopted under this subsection. The executive commissioner of  
19 the Health and Human Services Commission may adopt rules specifying  
20 the appropriate method used to test for the presence or absence of a  
21 fetal heartbeat of an unborn child based on standard medical  
22 practice.

23 Sec. 171.104. FAILURE TO DETERMINE EXISTENCE OF DETECTABLE  
24 HEARTBEAT; OFFENSE. (a) Except as provided by Subsection (d), a  
25 person may not knowingly perform or induce or attempt to perform or  
26 induce an abortion on a pregnant woman before determining, in  
27 accordance with Section 171.103, whether the unborn child has a

1 detectable heartbeat.

2 (b) A person who violates this section commits an offense.  
3 An offense under this section is a misdemeanor punishable by a fine  
4 not to exceed \$10,000.

5 (c) A pregnant woman on whom an abortion is performed or  
6 attempted in violation of this section may not be prosecuted under  
7 this section or for attempting to commit or conspiracy to commit a  
8 violation of this section.

9 (d) It is an exception to the application of this section  
10 that a physician performing or inducing or attempting to perform or  
11 induce an abortion believes that a medical emergency exists that  
12 prevents compliance with Section 171.103.

13 Sec. 171.105. ABORTION OF UNBORN CHILD WITH DETECTABLE  
14 HEARTBEAT PROHIBITED; OFFENSE. (a) Except as otherwise provided by  
15 Subsection (d), a person may not knowingly perform or induce or  
16 attempt to perform or induce an abortion on a pregnant woman with  
17 the specific intent of causing or abetting the termination of the  
18 life of the unborn child if it has been determined, in accordance  
19 with Section 171.103, that the unborn child has a detectable  
20 heartbeat.

21 (b) A person who violates this section commits an offense.  
22 An offense under this section is a misdemeanor punishable by a fine  
23 not to exceed \$10,000. In this section, "intent" has the meaning  
24 assigned by Section 6.03(a), Penal Code.

25 (c) A pregnant woman on whom an abortion is performed or  
26 attempted in violation of this section may not be prosecuted under  
27 this section or for attempting to commit or conspiracy to commit a

1 violation of this section.

2 (d) It is an exception to the application of this section  
3 that a physician performing or inducing or attempting to perform or  
4 induce an abortion believes that a medical emergency exists that  
5 prevents compliance with Section 171.103.

6 Sec. 171.106. INFORMATION REQUIRED BEFORE ABORTION. (a)  
7 This section applies only to an abortion authorized under Section  
8 171.107.

9 (b) A physician may not perform or induce or attempt to  
10 perform or induce an abortion on a pregnant woman if the unborn  
11 child has a detectable heartbeat, as determined under Section  
12 171.103, unless:

13 (1) the physician intending to perform or induce the  
14 abortion informs the pregnant woman in writing that the unborn  
15 child the pregnant woman is carrying has a fetal heartbeat;

16 (2) the physician provides to the pregnant woman  
17 information, in accordance with any rules adopted under Subsection  
18 (d) or, if no rules are adopted, to the best of the physician's  
19 knowledge, on the statistical probability of bringing the unborn  
20 child possessing a detectable fetal heartbeat to term based on the  
21 gestational age of the unborn child;

22 (3) the pregnant woman signs a form acknowledging that  
23 she has received information from the physician that the unborn  
24 child the pregnant woman is carrying has a fetal heartbeat and that  
25 the pregnant woman is aware of the statistical probability of  
26 bringing the unborn child to term; and

27 (4) at least 24 hours have elapsed since the

1 completion of the requirements under Subdivisions (1), (2), and  
2 (3).

3 (c) This section does not apply if the physician who intends  
4 to perform or induce the abortion believes that a medical emergency  
5 exists that prevents compliance with this section.

6 (d) The executive commissioner of the Health and Human  
7 Services Commission may adopt rules that specify the information a  
8 physician is required to provide to a pregnant woman under  
9 Subsection (b)(2) regarding the statistical probability of  
10 bringing an unborn child possessing a detectable heartbeat to term  
11 based on the gestational age of the unborn child. The rules must be  
12 based on available medical evidence.

13 (e) This section does not have the effect of repealing or  
14 limiting any other statutory provision relating to consent for an  
15 abortion.

16 Sec. 171.107. EXCEPTION; WRITTEN DECLARATION OF MEDICAL  
17 EMERGENCY. (a) The prohibitions and requirements under Sections  
18 171.103, 171.104, 171.105, and 171.106 do not apply to an abortion  
19 performed or induced on a pregnant woman if, in the physician's  
20 reasonable medical judgment, the abortion is designed or intended  
21 to prevent the woman's death or prevent a serious risk of  
22 substantial and irreversible impairment of a major bodily function  
23 of the woman.

24 (b) A physician who performs or induces or attempts to  
25 perform or induce an abortion because the physician believes a  
26 medical emergency exists that prevents compliance with Section  
27 171.103 or 171.106 shall make a written certification in the



1 pregnant woman's medical record that:

2 (1) states the physician believes that a medical  
3 emergency necessitating the abortion existed; and

4 (2) specifies the medical condition of the pregnant  
5 woman that prevented compliance with Section 171.103 or 171.106 and  
6 the medical rationale for the physician's conclusion.

7 (c) The physician shall maintain in the pregnant woman's  
8 medical record the certification described by Subsection (b) until  
9 at least the seventh anniversary of the date the certification was  
10 made in the record.

11 Sec. 171.108. CONTRACEPTIVES. Nothing in this subchapter  
12 prohibits the use, dispensing, prescribing, or administration of a  
13 contraceptive.

14 Sec. 171.109. CIVIL CAUSE OF ACTION. A person is liable to  
15 a woman in a civil action for the wrongful death of her unborn child  
16 if the person performed or induced an abortion on the woman and:

17 (1) the abortion was performed or induced in violation  
18 of Section 171.004 or 171.005;

19 (2) the woman was not provided the information  
20 described in Section 171.106(b)(2); or

21 (3) the woman did not sign a form described in Section  
22 171.106(b)(3).

23 Sec. 171.110. CONSTRUCTION OF SUBCHAPTER. (a) This  
24 subchapter shall be construed, as a matter of state law, to be  
25 enforceable up to but no further than the maximum possible extent  
26 consistent with federal constitutional requirements, even if that  
27 construction is not readily apparent, as such constructions are

1 authorized only to the extent necessary to save the subchapter from  
2 judicial invalidation. Judicial reformation of statutory language  
3 is explicitly authorized only to the extent necessary to save the  
4 statutory provision from invalidity.

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

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

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

1           SECTION 3. Section 164.052(a), Occupations Code, as amended  
2 by H.B. No. 2, Acts of the 83rd Legislature, 2nd Called Session,  
3 2013, is amended to read as follows:

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

6                 (1) submits to the board a false or misleading  
7 statement, document, or certificate in an application for a  
8 license;

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

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

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

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

18                (6) uses an advertising statement that is false,  
19 misleading, or deceptive;

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

23                (8) purchases, sells, barter, or uses, or offers to  
24 purchase, sell, barter, or use, a medical degree, license,  
25 certificate, or diploma, or a transcript of a license, certificate,  
26 or diploma in or incident to an application to the board for a  
27 license to practice medicine;

1           (9) alters, with fraudulent intent, a medical license,  
2 certificate, or diploma, or a transcript of a medical license,  
3 certificate, or diploma;

4           (10) uses a medical license, certificate, or diploma,  
5 or a transcript of a medical license, certificate, or diploma that  
6 has been:

7                   (A) fraudulently purchased or issued;

8                   (B) counterfeited; or

9                   (C) materially altered;

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

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

15           (13) impersonates a physician or permits another to  
16 use the person's license or certificate to practice medicine in  
17 this state;

18           (14) directly or indirectly employs a person whose  
19 license to practice medicine has been suspended, canceled, or  
20 revoked;

21           (15) associates in the practice of medicine with a  
22 person:

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

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

27           (16) performs or procures a criminal abortion, aids or

1 abets in the procuring of a criminal abortion, attempts to perform  
2 or procure a criminal abortion, or attempts to aid or abet the  
3 performance or procurement of a criminal abortion;

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

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

10 (A) the abortion is necessary to prevent the  
11 death of the woman;

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

14 (C) the woman is diagnosed with a significant  
15 likelihood of suffering imminent severe, irreversible brain damage  
16 or imminent severe, irreversible paralysis;

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

1 managing conservator, or legal guardian; ~~or~~

2 (20) performs or induces or attempts to perform or  
3 induce an abortion in violation of Subchapter C, Chapter 171,  
4 Health and Safety Code; or

5 (21) performs or induces or attempts to perform or  
6 induce an abortion in violation of Subchapter E, Chapter 171,  
7 Health and Safety Code.

8 SECTION 4. Section 164.055(b), Occupations Code, as amended  
9 by H.B. No. 2, Acts of the 83rd Legislature, 2nd Called Session,  
10 2013, is amended to read as follows:

11 (b) The sanctions provided by Subsection (a) are in addition  
12 to any other grounds for refusal to admit persons to examination  
13 under this subtitle or to issue a license or renew a license to  
14 practice medicine under this subtitle. The criminal penalties  
15 provided by Section 165.152 do not apply to a violation of Section  
16 170.002 or Subchapter C or E, Chapter 171, Health and Safety Code.

17 SECTION 5. This Act may not be construed to repeal, by  
18 implication or otherwise, Section 164.052(a)(18), Occupations  
19 Code, Section 170.002, Health and Safety Code, or, except as  
20 provided by Section 171.101, Health and Safety Code, as added by  
21 this Act, any other provision of Texas law regulating or  
22 restricting abortion not specifically addressed by this Act. An  
23 abortion that complies with this Act but violates any other law is  
24 unlawful. An abortion that complies with another state law but  
25 violates this Act is unlawful as provided in this Act.

26 SECTION 6. (a) If some or all of the provisions of this Act  
27 are ever temporarily or permanently restrained or enjoined by

1 judicial order, all other provisions of Texas law regulating or  
2 restricting abortion, including Subchapter C, Chapter 171, Health  
3 and Safety Code, shall be enforced as though the restrained or  
4 enjoined provisions had not been adopted; provided, however, that  
5 whenever the temporary or permanent restraining order or injunction  
6 is stayed or dissolved, or otherwise ceases to have effect, the  
7 provisions shall have full force and effect.

8 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in  
9 which in the context of determining the severability of a state  
10 statute regulating abortion the United States Supreme Court held  
11 that an explicit statement of legislative intent is controlling, it  
12 is the intent of the legislature that every provision, section,  
13 subsection, sentence, clause, phrase, or word in this Act, and  
14 every application of the provisions in this Act, are severable from  
15 each other. If any application of any provision in this Act to any  
16 person, group of persons, or circumstances is found by a court to be  
17 invalid, the remaining applications of that provision to all other  
18 persons and circumstances shall be severed and may not be affected.  
19 All constitutionally valid applications of this Act shall be  
20 severed from any applications that a court finds to be invalid,  
21 leaving the valid applications in force, because it is the  
22 legislature's intent and priority that the valid applications be  
23 allowed to stand alone. Even if a reviewing court finds a provision  
24 of this Act to impose an undue burden in a large or substantial  
25 fraction of relevant cases, the applications that do not present an  
26 undue burden shall be severed from the remaining provisions and  
27 shall remain in force, and shall be treated as if the legislature

1 had enacted a statute limited to the persons, group of persons, or  
2 circumstances for which the statute's application does not present  
3 an undue burden. The legislature further declares that it would  
4 have passed this Act, and each provision, section, subsection,  
5 sentence, clause, phrase, or word, and all constitutional  
6 applications of this Act, irrespective of the fact that any  
7 provision, section, subsection, sentence, clause, phrase, or word,  
8 or applications of this Act, were to be declared unconstitutional  
9 or to represent an undue burden.

10 (c) If Subchapter E, Chapter 171, Health and Safety Code, as  
11 added by this Act, prohibiting abortions performed on an unborn  
12 child after detection of a fetal heartbeat, is found by any court to  
13 be invalid or to impose an undue burden as applied to any person,  
14 group of persons, or circumstances, the prohibition shall apply to  
15 that person or group of persons or circumstances on the earliest  
16 date on which the subchapter can be applied constitutionally and in  
17 accordance with this Act.

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