

By: Laubenberg

H.B. No. 2364

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; and

(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.

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

1 SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS

2 POST-FERTILIZATION

3 Sec. 171.041. DEFINITION. In this subchapter,
4 "post-fertilization age" means the age of the unborn child as
5 calculated from the fusion of a human spermatozoon with a human
6 ovum.

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

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

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

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

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

27 (1) the probable post-fertilization age of the unborn

1 child is 20 or more weeks; or

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

5 (b) Except as otherwise provided by Section 171.045(a)(3),
6 a physician performing an abortion under Subsection (a) shall
7 terminate the pregnancy in the manner that, in the physician's
8 reasonable medical judgment, provides the best opportunity for the
9 unborn child to survive.

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

18 (1) the immediate abortion of her pregnancy without
19 the delay necessary to determine the probable post-fertilization
20 age of the unborn child;

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

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

25 (b) A physician may not take an action authorized under
26 Subsection (a) if the risk of death or a substantial and
27 irreversible physical impairment of a major bodily function arises

1 from a claim or diagnosis that the woman will engage in conduct that
2 may result in her death or in substantial and irreversible physical
3 impairment of a major bodily function.

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

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

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

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

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

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

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

26 Sec. 171.047. CONSTRUCTION OF SUBCHAPTER. This subchapter
27 may not be construed to authorize the prosecution of or a cause of

1 action to be brought against a woman on whom an abortion is
2 performed or induced or attempted to be performed or induced in
3 violation of this subchapter.

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

6 (c) The report must include:

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

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

11 (3) the type of abortion procedure;

12 (4) the date the abortion was performed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 has been:

2 (A) fraudulently purchased or issued;

3 (B) counterfeited; or

4 (C) materially altered;

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

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

10 (13) impersonates a physician or permits another to
11 use the person's license or certificate to practice medicine in
12 this state;

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

16 (15) associates in the practice of medicine with a
17 person:

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

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

22 (16) performs or procures a criminal abortion, aids or
23 abets in the procuring of a criminal abortion, attempts to perform
24 or procure a criminal abortion, or attempts to aid or abet the
25 performance or procurement of a criminal abortion;

26 (17) directly or indirectly aids or abets the practice
27 of medicine by a person, partnership, association, or corporation

1 that is not licensed to practice medicine by the board;

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

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

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

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

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

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

27 SECTION 5. Section 164.055(b), Occupations Code, is amended

1 to read as follows:

2 (b) The sanctions provided by Subsection (a) are in addition
3 to any other grounds for refusal to admit persons to examination
4 under this subtitle or to issue a license or renew a license to
5 practice medicine under this subtitle. The criminal penalties
6 provided by Section 165.152 do not apply to a violation of Section
7 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

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

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

24 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in
25 which in the context of determining the severability of a state
26 statute regulating abortion the United States Supreme Court noted
27 that an explicit statement of legislative intent specifically made

1 applicable to a particular statute is of greater weight than a
2 general savings or severability clause, it is the intent of the
3 legislature that if any provision, section, subsection, sentence,
4 clause, phrase, or word of this Act or the application thereof to
5 any person or circumstance is found to be unconstitutional, the
6 provision, section, subsection, sentence, clause, phrase, or word
7 is hereby declared to be severable and the balance of this Act
8 remains effective notwithstanding such unconstitutionality.
9 Moreover, the legislature declares that it would have passed this
10 Act, and each provision, section, subsection, sentence, clause,
11 phrase, or word thereof, irrespective of the fact that any
12 provision, section, subsection, sentence, clause, phrase, or word,
13 or any of their applications, were to be declared unconstitutional.

14 SECTION 8. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2013.