

By: Rodríguez

S.B. No. 95

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the Whole Woman's Health Act.

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

4 SECTION 1. (a) This Act shall be known as the Whole Woman's
5 Health Act.

6 (b) The legislature finds that:

7 (1) comprehensive reproductive health care, including
8 safe abortion, is a vital component of a woman's overall health and
9 of her social and economic equality;

10 (2) abortion is one of the safest medical procedures
11 in the United States, as demonstrated by available data, including
12 from the federal Centers for Disease Control and Prevention,
13 showing abortion has a more than 99 percent safety record;

14 (3) any regulation of medical care must have a
15 legitimate purpose and advance the goals of improving the quality
16 of care and increasing access to care;

17 (4) the United States Supreme Court held more than 40
18 years ago in *Roe v. Wade* that access to an abortion is a
19 constitutional right and that states may not prohibit abortion
20 before viability;

21 (5) the right to an abortion has been upheld multiple
22 times by the United States Supreme Court, including in the 1992 case
23 *Planned Parenthood v. Casey* and most recently in the landmark
24 decision *Whole Woman's Health v. Hellerstedt*;

1 (6) in *Whole Woman's Health*, the court held that the
2 United States Constitution "requires that courts consider the
3 burdens a law imposes on abortion access together with the benefits
4 those laws confer";

5 (7) in *Whole Woman's Health*, the court further held
6 that courts, "when determining the constitutionality of laws
7 regulating abortion procedures," must place "considerable weight
8 upon evidence . . . presented";

9 (8) applying the standard described in Subdivision (7)
10 of this section in *Whole Woman's Health*, the court struck down two
11 provisions of Chapter 1 (H.B. 2), Acts of the 83rd Legislature, 2nd
12 Called Session, 2013, that were designed to close abortion clinics
13 in the state and that the court concluded provided few, if any,
14 health benefits for women;

15 (9) Justice Ruth Bader Ginsburg concluded in *Whole*
16 *Woman's Health* given the safety of abortion, "it is beyond rational
17 belief that H.B. 2 could genuinely protect the health of women, and
18 certain that the law 'would simply make it more difficult for them
19 to obtain abortions'";

20 (10) Justice Ruth Bader Ginsburg also observed
21 abortion restrictions that "'do little or nothing for health, but
22 rather strew impediments to abortion' . . . cannot survive judicial
23 inspection";

24 (11) according to the American College of
25 Obstetricians and Gynecologists, American Medical Association,
26 American Academy of Family Physicians, and American Osteopathic
27 Association, which are leading public health organizations and

1 *amici curiae* for the petitioners in *Whole Woman's Health*,
2 "[w]omen's access to high-quality, evidence-based abortion should
3 not be limited by laws enacted under the guise of patient safety but
4 that, in fact, harm women's health"; and

5 (12) the 334 restrictions on abortion providers and
6 their patients adopted nationally since 2011 and the 13 onerous
7 restrictions enacted in this state based on pretextual reasons are
8 just a systematic attempt to eliminate access to safe and legal
9 medical care.

10 (c) In accordance with the United States Constitution, it is
11 the intent of the legislature to prevent the enforcement of laws or
12 regulations that burden abortion access and do not provide
13 legitimate health benefits.

14 SECTION 2. The heading to Chapter 170, Health and Safety
15 Code, is amended to read as follows:

16 CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION AND RIGHT TO
17 ABORTION

18 SECTION 3. Chapter 170, Health and Safety Code, is amended
19 by adding Sections 170.003 and 170.004 to read as follows:

20 Sec. 170.003. RIGHT TO ABORTION. Every woman in this state
21 has the fundamental right to choose to obtain a safe and legal
22 abortion. This state or a political subdivision of this state may
23 not prohibit a woman from obtaining an abortion at any time
24 throughout her pregnancy if the termination is necessary, in the
25 professional judgment of a physician, to protect the woman's life
26 or health.

27 Sec. 170.004. PROHIBITED ABORTION LAWS; CIVIL ACTION;

1 WAIVER OF IMMUNITY. (a) Notwithstanding any other law, this state
2 or a political subdivision of this state may not enforce a law on
3 abortion that places a burden on a woman's access to abortion and
4 does not confer any legitimate health benefit to the woman.

5 (b) For purposes of Subsection (a), a law places a burden on
6 access to abortion if the law:

7 (1) forces abortion providers to close;

8 (2) increases the time a woman is required to wait to
9 have an abortion;

10 (3) requires a meaningful increase in the distance a
11 woman is required to travel to access care;

12 (4) requires medically unnecessary visits to a health
13 care facility;

14 (5) requires a health care provider to perform a
15 medical or health care service the provider would not otherwise
16 perform;

17 (6) increases the risk to a woman's health;

18 (7) causes a meaningful increase in the cost of an
19 abortion procedure;

20 (8) is enacted solely for the purpose of stigmatizing
21 abortion patients and abortion providers; or

22 (9) has as its sole purpose or effect decreasing or
23 eliminating access to abortion.

24 (c) For purposes of Subsection (a), a law confers a
25 legitimate health benefit if the law:

26 (1) expands a woman's access to medical or health care
27 services; or

1 (2) increases an abortion patient's safety according
2 to evidence-based research.

3 (d) A person who is aggrieved by this state's or a political
4 subdivision's violation of Subsection (a) may bring a civil action
5 against this state or the political subdivision for injunctive
6 relief and damages incurred as a result of the violation. Sovereign
7 immunity of this state and governmental immunity of the political
8 subdivision from suit and to liability are waived and abolished to
9 the extent of liability created under this subsection.

10 SECTION 4. Section 171.003, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 171.003. PERSONS WHO MAY [~~PHYSICIAN—TO~~] PERFORM
13 ABORTION. An abortion may be performed only by:

14 (1) a physician licensed to practice medicine in this
15 state;

16 (2) a nurse licensed under Subtitle E, Title 3,
17 Occupations Code, operating within the nurse's scope of practice;
18 or

19 (3) a physician assistant licensed under Chapter 204,
20 Occupations Code, operating within the physician assistant's scope
21 of practice.

22 SECTION 5. The heading to Section 245.010, Health and
23 Safety Code, is amended to read as follows:

24 Sec. 245.010. PERSONS WHO MAY PERFORM ABORTION [~~MINIMUM~~
25 ~~STANDARDS~~].

26 SECTION 6. Section 245.010(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) Only a physician as defined by Subtitle B, Title 3,
2 Occupations Code, a nurse licensed under Subtitle E, Title 3,
3 Occupations Code, operating within the scope of that license, or a
4 physician assistant licensed under Chapter 204, Occupations Code,
5 operating within the scope of that license may perform an abortion.

6 SECTION 7. Section 164.052(a), Occupations Code, as
7 effective September 1, 2017, is amended to read as follows:

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

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

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

15 (3) commits fraud or deception in taking or passing an
16 examination;

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

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

22 (6) uses an advertising statement that is false,
23 misleading, or deceptive;

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

27 (8) purchases, sells, barter, or uses, or offers to

1 purchase, sell, barter, or use, a medical degree, license,
2 certificate, or diploma, or a transcript of a license, certificate,
3 or diploma in or incident to an application to the board for a
4 license to practice medicine;

5 (9) alters, with fraudulent intent, a medical license,
6 certificate, or diploma, or a transcript of a medical license,
7 certificate, or diploma;

8 (10) uses a medical license, certificate, or diploma,
9 or a transcript of a medical license, certificate, or diploma that
10 has been:

11 (A) fraudulently purchased or issued;

12 (B) counterfeited; or

13 (C) materially altered;

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

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

19 (13) impersonates a physician or permits another to
20 use the person's license or certificate to practice medicine in
21 this state;

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

25 (15) associates in the practice of medicine with a
26 person:

27 (A) whose license to practice medicine has been

1 suspended, canceled, or revoked; or

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

4 (16) performs or procures a criminal abortion, aids or
5 abets in the procuring of a criminal abortion, attempts to perform
6 or procure a criminal abortion, or attempts to aid or abet the
7 performance or procurement of a criminal abortion;

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

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

14 (A) the abortion is necessary to protect the
15 health or prevent the death of the woman;

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

18 (C) the woman is diagnosed with a significant
19 likelihood of suffering imminent severe, irreversible brain damage
20 or imminent severe, irreversible paralysis;

21 (19) performs an abortion on an unemancipated minor
22 without the written consent of the child's parent, managing
23 conservator, or legal guardian or without a court order, as
24 provided by Section 33.003 or 33.004, Family Code, unless the
25 abortion is necessary due to a medical emergency, as defined by
26 Section 171.002, Health and Safety Code; or

27 (20) otherwise performs an abortion on an

1 unemancipated minor in violation of Chapter 33, Family Code~~[, or~~
2 ~~[(21) performs or induces or attempts to perform or~~
3 ~~induce an abortion in violation of Subchapter C, F, or G, Chapter~~
4 ~~171, Health and Safety Code]~~.

5 SECTION 8. Section 164.055(b), Occupations Code, as
6 effective September 1, 2017, is amended to read as follows:

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

14 SECTION 9. The following provisions are repealed:

- 15 (1) Section 32.005, Health and Safety Code;
- 16 (2) Sections 171.0031, 171.004, 171.012, 171.0121,
17 171.0122, 171.0123, 171.013, 171.014, 171.015, 171.016, 171.017,
18 and 171.018, Health and Safety Code;
- 19 (3) Subchapters C, D, F, and G, Chapter 171, Health and
20 Safety Code;
- 21 (4) Sections 241.007, 243.017, 245.010(a), and
22 245.024, Health and Safety Code; and
- 23 (5) Section 164.0551, Occupations Code.

24 SECTION 10. The changes in law made by this Act apply only
25 to an abortion performed on or after the effective date of this Act.
26 An abortion performed before the effective date of this Act is
27 governed by the law applicable to the abortion immediately before

1 the effective date of this Act, and that law is continued in effect
2 for that purpose.

3 SECTION 11. This Act takes effect December 1, 2017.