

BILL ANALYSIS

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C.S.S.B. 8
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2003, the U.S. Congress enacted a ban on the practice known as "partial-birth abortion," a procedure in which labor is induced and a live fetus is partially delivered in the breach presentation (feet-first), allowing a doctor to sever its spinal cord before the fetus fully emerges from the birth canal. This federal ban was later challenged and subsequently upheld by the U.S. Supreme Court in 2007.

Without a concurrent prohibition in state law, Texas law enforcement lacks the authority to enforce the ban on partial-birth abortion, leaving federal law enforcement with the sole authority to assert criminal charges in these cases. By aligning state and federal statute, Texas law enforcement will have the clear authority to investigate and prosecute any violations of the partial-birth abortion ban.

In addition, existing federal law states that it is "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce." However, this prohibition, by itself, is inadequate since these offenses must affect interstate commerce in order to be considered unlawful. Federal law also forbids providing incentives to persuade a woman to become pregnant for the purposes of selling fetal tissue, but similarly, this provision can only be enforced if it affects interstate commerce.

State and federal statute currently allow for "valuable consideration" to be paid to abortion providers for the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue. However, detailed accounting of these reimbursements is not required, allowing abortion providers to potentially overstate these permissible expenses and sell human fetal tissue for what amounts to a profit.

Key Provisions

- Prohibits the donation of human fetal tissue acquired as a result of an elective abortion.
- Codifies federal statute to ban partial-birth abortion.
- Creates a criminal offense for the receipt of any payment made in exchange for human fetal tissue.
- Prohibits the solicitation or acceptance of tissue from fetuses gestated for research purposes.
- Increases criminal penalties for buying or selling human fetal tissue.
- Prohibits the offering of incentives to undergo an abortion procedure or donate fetal tissue.
- Clarifies that hospitals, ambulatory surgical centers, or birthing centers are only permitted to donate fetal tissue from a non-elective abortion (including the umbilical cord and placenta) to an accredited public institution of higher education for the purpose of academic research.

- Requires doctors to certify that no alteration of the timing, method, or procedures used to terminate the pregnancy was made for the purposes of obtaining the tissue.
- Creates a reporting requirement for eligible entities to inform the Department of State Health Services (DSHS) about instances of fetal tissue donation.
- Requires records maintenance for abortion providers for a period of seven years after consent was given, or if the woman is under 18 years of age, the later of the woman's 23rd birthday or seven years after the date of consent.

Committee Substitute

- Allows the Office of the Attorney General (OAG) to assist DSHS and local law enforcement with investigations and for local county and district attorneys to request assistance in prosecution from the OAG.
- Increases the penalty for incentivizing an abortion for fetal tissue donation from a Class C misdemeanor to a Class A misdemeanor with a maximum fine of \$10,000.
- Changes the term "valuable consideration" to "economic benefit" to align this section with the Penal Code.
- Changes the university employee exception from prosecution to a defense from prosecution.
- Clarifies that this bill does not apply to human fetal tissue obtained for diagnostic or pathological testing, for a criminal investigation, for the disposition of human remains, and for anything unrelated to fetal tissue.
- Removes the donation restrictions for supporting cells or tissue derived from a pregnancy, associated maternal tissue not related to the unborn child, the placenta, and the umbilical cord. The clarification was added for donated placenta and umbilical cords because these are considered human tissue, not fetal tissue, and are used for research. Also the blood from the umbilical cord can be donated to blood banks.
- Gives the Texas Medical Board 60 days instead of 30 to determine if a physician followed the standard of care and applicable laws when performing an abortion.
- Adds that a teaching hospital is also an authorized facility to donate fetal tissue since they were left out of the filed version of S.B. 8.
- Clarifies what types of internal research oversight a university can use to conduct research on fetal tissue from non-elective abortions as authorized by this bill.
- Clarifies that an authorized facility collecting and releasing donated fetal tissue keeps a record of the university that receives the fetal tissue.

C.S.S.B. 8 amends current law relating to certain prohibited abortions and the treatment and disposition of a human fetus and human fetal tissue; creates a civil cause of action; and creates offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Texas Health and Human Services Commission in SECTION 7 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Health and Safety Code, by adding Subchapter F, as follows:

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. Defines "partial-birth abortion" and "physician."

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) Prohibits a physician or other person from knowingly performing a partial-birth abortion.

(b) Provides that Subsection (a) does not apply to a physician who performs a partial-birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

Sec. 171.103. CRIMINAL PENALTY. Provides that a person who violates Section 171.102 commits an offense. Provides that an offense is a state jail felony.

Sec. 171.104. CIVIL LIABILITY. (a) Authorizes, except as provided by Subsection (b), the father of the fetus or a parent of the mother of the fetus, if the mother is younger than 18 years of age at the time of the partial-birth abortion, to bring a civil action to obtain appropriate relief, including money damages for physical injury, mental anguish, and emotional distress, and exemplary damages equal to three times the cost of the partial-birth abortion.

(b) Prohibits a person from bringing or maintaining an action under this section if the person consented to the partial-birth abortion, or the person's criminally injurious conduct resulted in the pregnancy.

Sec. 171.105. HEARING. (a) Authorizes a physician who is the subject of a criminal or civil action for a violation of Section 171.102 to request a hearing before the Texas Medical Board (TMB) on whether the physician's conduct was necessary to save the life of a mother whose life was endangered by certain physical conditions.

(b) Provides that TMB's findings under Subsection (a) are admissible in any court proceeding against the physician arising from that conduct. Requires the court, on the physician's motion, to delay the beginning of a criminal or civil trial for not more than 60 days for the hearing to be held under Subsection (a).

Sec. 171.106. APPLICABILITY. Prohibits a woman on whom a partial-birth abortion is performed or attempted in violation of this subchapter from being prosecuted under this subchapter or for conspiracy to commit a violation of this subchapter.

SECTION 2. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 173, as follows:

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

Sec. 173.001. DEFINITIONS. Defines "authorized facility" and "human fetal tissue."

Sec. 173.002. APPLICABILITY. Provides that this chapter does not apply to:

- (1) human fetal tissue obtained for diagnostic or pathological testing;
- (2) human fetal tissue obtained for a criminal investigation; or
- (3) human fetal tissue or human tissue obtained during pregnancy or at delivery of a child, provided the tissue is obtained by an accredited university for use in research approved by an institutional review board or another appropriate university board, committee, or body charged with oversight applicable to the research.

Sec. 173.003. ENFORCEMENT. (a) Requires the Department of State Health Services (DSHS) to enforce this chapter.

(b) Authorizes the attorney general to, on request of DSHS or a local law enforcement agency, assist in the investigation of a violations of this chapter.

Sec. 173.004. PROHIBITED DONATION. Prohibits a person from donating human fetal tissue except as authorized by this chapter.

Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Authorizes only an authorized facility to donate human fetal tissue. Authorizes an authorized facility to donate human fetal tissue only to an accredited university for use in research approved by an institutional review board or another appropriate university board, committee, or body charged with oversight applicable to the research.

(b) Prohibits an authorized facility from donating human fetal tissue that is obtained from an elective abortion.

Sec. 173.006. INFORMED CONSENT REQUIRED. Prohibits an authorized facility from donating human fetal tissue under this chapter unless the facility has obtained the written, voluntary, and informed consent of the woman from whose pregnancy the fetal tissue is obtained. Requires the consent to be provided on a standard form prescribed by DSHS.

Sec. 173.007. CRIMINAL PENALTY. (a) Provides that a person commits an offense if the person offers a woman monetary or other consideration to have an abortion for the purpose of donating human fetal tissue or to consent to the donation of human fetal tissue, or if the person knowingly or intentionally solicits or accepts tissue from a fetus gestated solely for research purposes.

(b) Provides that an offense under this section is a Class A misdemeanor punishable by a fine of not more than \$10,000.

(c) Provides that the attorney general, with the consent of the appropriate local county or district attorney, has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

Sec. 173.008. RECORD RETENTION. Prohibits, unless another law requires a longer period of record retention, an authorized facility from disposing of any medical record relating to a woman who consents to the donation of human fetal tissue before certain dates.

Sec. 173.009. ANNUAL REPORT. Requires an authorized facility that donates human fetal tissue under this chapter to submit an annual report to DSHS that includes for each donation the specific type of fetal tissue donated and the accredited university that received the donation.

SECTION 3. Amends Section 164.052(a), Occupations Code, to include performing, inducing, or attempting to perform or induce or attempt to perform or induce an abortion in violation of Subchapter F, Chapter 171, Health and Safety Code, in the list of certain prohibited practices for a physician or an applicant for a medical license.

SECTION 4. Amends Section 164.055(b), Occupations Code, to provide that the criminal penalties provided by Section 165.152 (Practicing Medicine in Violation of Subtitle) do not apply to a violation of Section 170.002 (Prohibited Acts; Exemption), Health and Safety Code, or Subchapter C (Abortion Prohibited at or After 20 Weeks Post-Fertilization) or F, Chapter 171, Health and Safety Code, rather than a violation of Section 170.002 or Subchapter C, Chapter 171, Health and Safety Code.

SECTION 5. Amends Section 48.02(a), Penal Code, to redefine "human organ."

SECTION 6. Amends Chapter 48, Penal Code, by adding Section 48.03, as follows:

Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE. (a) Defines "human fetal tissue."

(b) Provides that a person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for economic benefit.

(c) Provides that an offense under this section is a state jail felony.

(d) Provides that it is a defense to prosecution under this section that the actor is an employee of or under contract with an accredited university and acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling an donation authorized by Section 173.005, Health and Safety Code.

(e) Provides that this section does not apply to certain human fetal tissue or human tissue acquired, received, or transferred for certain purposes.

(f) Provides that the attorney general, with the consent of the appropriate local county or district attorney, has concurrent jurisdiction with that consenting local prosecutor to prosecute an offense under this section.

SECTION 7. Requires, not later than December 1, 2017, DSHS to prescribe the standard consent form required by Section 173.006, Health and Safety Code, as added by this Act, and the executive commissioner of the Texas Health and Human Services Commission to adopt any rules necessary to implement Chapter 173, Health and Safety Code, as added by this Act.

SECTION 8. (a) Makes application of Subchapter F, Chapter 171, Health and Safety Code, as added by this Act, prospective.

(b) Provides that Sections 173.003, 173.004, 173.005, and 173.006, Health and Safety Code, as added by this Act, apply to a donation of human fetal tissue that occurs on or after the effective date of this Act, regardless of whether the human fetal tissue was acquired before, on, or after that date.

(c) Provides that an authorized facility is not required to make an initial annual report under Section 173.009, Health and Safety Code, as added by this Act, before January 1, 2019.

(d) Makes application of Chapter 48, Penal Code, as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2017.