

By: Klick

H.B. No. 844

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on the performance of dismemberment abortions; providing penalties; creating a criminal offense.

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

SECTION 1. Chapter 171, Health and Safety Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. DISMEMBERMENT ABORTIONS

Sec. 171.101. DEFINITION. In this subchapter, "dismemberment abortion" means an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child's body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child's death.

Sec. 171.102. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A person may not intentionally perform a dismemberment abortion

1 unless the dismemberment abortion is necessary in a medical
2 emergency.

3 (b) A woman on whom a dismemberment abortion is performed,
4 an employee or agent acting under the direction of a physician who
5 performs a dismemberment abortion, or a person who fills a
6 prescription or provides equipment used in a dismemberment abortion
7 does not violate Subsection (a).

8 Sec. 171.103. CRIMINAL PENALTY. (a) A person who violates
9 Section 171.102 commits an offense.

10 (b) An offense under this section is a state jail felony.

11 Sec. 171.104. CONSTRUCTION OF SUBCHAPTER. (a) This
12 subchapter shall be construed, as a matter of state law, to be
13 enforceable to the maximum possible extent consistent with but not
14 further than federal constitutional requirements, even if that
15 construction is not readily apparent, as such constructions are
16 authorized only to the extent necessary to save the subchapter from
17 judicial invalidation. Judicial reformation of statutory language
18 is explicitly authorized only to the extent necessary to save the
19 statutory provision from invalidity.

20 (b) If any court determines that a provision of this
21 subchapter is unconstitutionally vague, the court shall interpret
22 the provision, as a matter of state law, to avoid the vagueness
23 problem and shall enforce the provision to the maximum possible
24 extent. If a federal court finds any provision of this subchapter
25 or its application to any person, group of persons, or
26 circumstances to be unconstitutionally vague and declines to impose
27 the saving construction described by this subsection, the Supreme

1 Court of Texas shall provide an authoritative construction of the
2 objectionable statutory provisions that avoids the constitutional
3 problems while enforcing the statute's restrictions to the maximum
4 possible extent and shall agree to answer any question certified
5 from a federal appellate court regarding the statute.

6 (c) A state executive or administrative official may not
7 decline to enforce this subchapter, or adopt a construction of this
8 subchapter in a way that narrows its applicability, based on the
9 official's own beliefs concerning the requirements of the state or
10 federal constitution, unless the official is enjoined by a state or
11 federal court from enforcing this subchapter.

12 (d) This subchapter may not be construed to:

13 (1) authorize the prosecution of or a cause of action
14 to be brought against a woman on whom an abortion is performed or
15 induced in violation of this subchapter; or

16 (2) create or recognize a right to abortion or a right
17 to a particular method of abortion.

18 SECTION 2. Section 164.052(a), Occupations Code, is amended
19 to read as follows:

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

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

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

27 (3) commits fraud or deception in taking or passing an

1 examination;

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

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

7 (6) uses an advertising statement that is false,
8 misleading, or deceptive;

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

12 (8) purchases, sells, barter, or uses, or offers to
13 purchase, sell, barter, or use, a medical degree, license,
14 certificate, or diploma, or a transcript of a license, certificate,
15 or diploma in or incident to an application to the board for a
16 license to practice medicine;

17 (9) alters, with fraudulent intent, a medical license,
18 certificate, or diploma, or a transcript of a medical license,
19 certificate, or diploma;

20 (10) uses a medical license, certificate, or diploma,
21 or a transcript of a medical license, certificate, or diploma that
22 has been:

23 (A) fraudulently purchased or issued;

24 (B) counterfeited; or

25 (C) materially altered;

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

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

4 (13) impersonates a physician or permits another to
5 use the person's license or certificate to practice medicine in
6 this state;

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

10 (15) associates in the practice of medicine with a
11 person:

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

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

16 (16) performs or procures a criminal abortion, aids or
17 abets in the procuring of a criminal abortion, attempts to perform
18 or procure a criminal abortion, or attempts to aid or abet the
19 performance or procurement of a criminal abortion;

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

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

26 (A) the abortion is necessary to prevent the
27 death of the woman;

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

3 (C) the woman is diagnosed with a significant
4 likelihood of suffering imminent severe, irreversible brain damage
5 or imminent severe, irreversible paralysis;

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

12 (20) otherwise performs an abortion on an
13 unemancipated minor in violation of Chapter 33, Family Code; ~~or~~

14 (21) performs or induces or attempts to perform or
15 induce an abortion in violation of Subchapter C, Chapter 171,
16 Health and Safety Code; or

17 (22) performs a dismemberment abortion in violation of
18 Subchapter F, Chapter 171, Health and Safety Code.

19 SECTION 3. Section 164.055(b), Occupations Code, is amended
20 to read as follows:

21 (b) The sanctions provided by Subsection (a) are in addition
22 to any other grounds for refusal to admit persons to examination
23 under this subtitle or to issue a license or renew a license to
24 practice medicine under this subtitle. The criminal penalties
25 provided by Section 165.152 do not apply to a violation of Section
26 170.002, Health and Safety Code, or Subchapter C or F, Chapter 171,
27 Health and Safety Code.

1 SECTION 4. (a) If some or all of the provisions of this Act
2 are ever temporarily or permanently restrained or enjoined by
3 judicial order, all other provisions of Texas law regulating or
4 restricting abortion shall be enforced as though the restrained or
5 enjoined provisions had not been adopted; provided, however, that
6 whenever the temporary or permanent restraining order or injunction
7 is stayed or dissolved, or otherwise ceases to have effect, the
8 provisions shall have full force and effect.

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

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

11 (c) If any provision of this Act is found by any court to be
12 unconstitutionally vague, then the applications of that provision
13 that do not present constitutional vagueness problems shall be
14 severed and remain in force.

15 SECTION 5. The change in law made by this Act applies only
16 to an abortion performed on or after the effective date of this Act.
17 An abortion performed before the effective date of this Act is
18 governed by the law in effect on the date the abortion was
19 performed, and the former law is continued in effect for that
20 purpose.

21 SECTION 6. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2017.