By: Schwertner, et al. S.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to certain prohibited abortions and the treatment and
disposition of a human fetus and human fetal tissue; creating a
civil cause of action; creating offenses.

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. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in
which the person performing the abortion:

(A) for the purpose of performing an overt act
that the person knows will kill the partially delivered living
fetus, deliberately and intentionally vaginally delivers a living
fetus until:

(i) for a head-first presentation, the
entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of
the fetal trunk past the navel is outside the body of the mother;

and

(B) performs the overt act described in Paragraph
(A), other than completion of delivery, that kills the partially
delivered living fetus.

(2) "Physician" means an individual who is licensed to
practice medicine in this state, including a medical doctor and a
doctor of osteopathic medicine.

Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A
physician or other person may not knowingly perform a partial-birth
abortion.

(b) 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. A person who violates
Section 171.102 commits an offense. An offense under this section
is a state jail felony.

Sec. 171.104. CIVIL LIABILITY. (a) 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, may bring a civil action to obtain
appropriate relief, including:

(1) money damages for physical injury, mental anguish,
and emotional distress; and
(2) exemplary damages equal to three times the cost of
the partial-birth abortion.

(b) A person may not bring or maintain an action under this
section if:

(1) the person consented to the partial-birth
abortion; or
(2) the person's criminally injurious conduct resulted
in the pregnancy.

Sec. 171.105. HEARING. (a) A physician who is the subject of a criminal or civil action for a violation of Section 171.102 may request a hearing before the Texas Medical Board on whether the physician's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy.

(b) The board's findings under Subsection (a) are admissible in any court proceeding against the physician arising from that conduct. On the physician's motion, the court shall 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. A woman on whom a partial-birth abortion is performed or attempted in violation of this subchapter may not be prosecuted under this subchapter or for conspiracy to commit a violation of this subchapter.

SECTION 2. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 173 to read as follows:

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

Sec. 173.001. DEFINITIONS. In this chapter:

(1) "Authorized facility" means:

(A) a hospital licensed under Chapter 241;

(B) a hospital maintained or operated by this state or an agency of this state;

(C) an ambulatory surgical center licensed under Chapter 243; or
(D) a birthing center licensed under Chapter 244.

(2) "Human fetal tissue" means any gestational human organ, cell, or tissue from an unborn child. The term does not include supporting cells or tissue derived from a pregnancy, associated maternal tissue that is not part of the unborn child, the umbilical cord, or the placenta.

Sec. 173.002. APPLICABILITY. 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) The department shall enforce this chapter.
(b) The attorney general, on request of the department or a local law enforcement agency, may assist in the investigation of a violation of this chapter.

Sec. 173.004. PROHIBITED DONATION. A person may not donate human fetal tissue except as authorized by this chapter.

Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only an authorized facility may donate human fetal tissue. An
authorized facility may 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) An authorized facility may not donate human fetal tissue obtained from an elective abortion.

Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized facility may not donate 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. The consent must be provided on a standard form prescribed by the department.

Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) offers a woman monetary or other consideration to:
    (A) have an abortion for the purpose of donating human fetal tissue; or
    (B) consent to the donation of human fetal tissue; or

(2) knowingly or intentionally solicits or accepts tissue from a fetus gestated solely for research purposes.

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

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

Sec. 173.008. RECORD RETENTION. Unless another law requires a longer period of record retention, an authorized facility may not dispose of any medical record relating to a woman who consents to the donation of human fetal tissue before:

(1) the seventh anniversary of the date consent was obtained under Section 173.006; or

(2) if the woman was younger than 18 years of age on the date consent was obtained under Section 173.006, the later of:

(A) the woman's 23rd birthday; or

(B) the seventh anniversary of the date consent was obtained.

Sec. 173.009. ANNUAL REPORT. An authorized facility that donates human fetal tissue under this chapter shall submit an annual report to the department that includes for each donation:

(1) the specific type of fetal tissue donated; and

(2) the accredited university that received the donation.

SECTION 3. Section 164.052(a), Occupations Code, is amended to read as follows:

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

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

(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;
(3) commits fraud or deception in taking or passing an examination;
(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;
(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;
(6) uses an advertising statement that is false, misleading, or deceptive;
(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;
(8) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;
(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;
(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:
   (A) fraudulently purchased or issued;
   (B) counterfeited; or
   (C) materially altered;
(11) impersonates or acts as proxy for another person
in an examination required by this subtitle for a medical license;
(12) engages in conduct that subverts or attempts to
subvert an examination process required by this subtitle for a
medical license;
(13) impersonates a physician or permits another to
use the person's license or certificate to practice medicine in
this state;
(14) directly or indirectly employs a person whose
license to practice medicine has been suspended, canceled, or
revoked;
(15) associates in the practice of medicine with a
person:
   (A) whose license to practice medicine has been
   suspended, canceled, or revoked; or
   (B) who has been convicted of the unlawful
   practice of medicine in this state or elsewhere;
(16) performs or procures a criminal abortion, aids or
abets in the procuring of a criminal abortion, attempts to perform
or procure a criminal abortion, or attempts to aid or abet the
performance or procurement of a criminal abortion;
(17) directly or indirectly aids or abets the practice
of medicine by a person, partnership, association, or corporation
that is not licensed to practice medicine by the board;
(18) performs an abortion on a woman who is pregnant
with a viable unborn child during the third trimester of the
pregnancy unless:
   (A) the abortion is necessary to prevent the
death of the woman;

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

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

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

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

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

SECTION 4. Section 164.055(b), Occupations Code, is amended to read as follows:

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

SECTION 5. Section 48.02(a), Penal Code, is amended to read
as follows:

(a) **In this section, "human ["Human"] organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, [fetal tissue,] or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents. The term does not include human fetal tissue as defined by Section 48.03.**

**SECTION 6.** Chapter 48, Penal Code, is amended by adding Section 48.03 to read as follows:

Sec. 48.03. **PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE.** (a) In this section, "human fetal tissue" has the meaning assigned by Section 173.001, Health and Safety Code.

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

(d) It is a defense to prosecution under this section that the actor:

(1) is an employee of or under contract with an accredited university; and

(2) acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling a donation authorized by Section 173.005, Health and Safety Code.

(e) This section does not apply to:

(1) human fetal tissue acquired, received, or transferred solely for diagnostic or pathological testing;

(2) human fetal tissue acquired, received, or...
transferred solely for the purposes of a criminal investigation; 

(3) human fetal tissue acquired, received, or transferred solely for the purpose of disposing of the tissue in accordance with state law or rules applicable to the disposition of human remains; or 

(4) human fetal tissue or human tissue acquired during pregnancy or at delivery of a child, provided the tissue is acquired 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.

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

SECTION 7. Not later than December 1, 2017:

(1) the Department of State Health Services shall prescribe the standard consent form required by Section 173.006, Health and Safety Code, as added by this Act; and

(2) the executive commissioner of the Health and Human Services Commission shall adopt any rules necessary to implement Chapter 173, Health and Safety Code, as added by this Act.

SECTION 8. (a) Subchapter F, Chapter 171, Health and Safety Code, as added by this Act, applies only to an abortion performed on or after the effective date of this Act. An abortion performed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and
that law is continued in effect for that purpose.

(b) 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) 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) Chapter 48, Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 9. This Act takes effect September 1, 2017.