

By: Schwertner, et al.
(Burkett, Cook, Laubenberg, Raney, Bailes)

S.B. No. 8

Substitute the following for S.B. No. 8:

By: Cook

C.S.S.B. No. 8

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain prohibited abortions and the treatment and
3 disposition of a human fetus, human fetal tissue, and embryonic and
4 fetal tissue remains; creating a civil cause of action; imposing a
5 civil penalty; creating criminal offenses.

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

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

9 SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

10 Sec. 171.101. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

12 Sec. 171.103. CRIMINAL PENALTY. A person who violates
13 Section 171.102 commits an offense. An offense under this section
14 is a state jail felony.

15 Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by
16 Subsection (b), the father of the fetus or a parent of the mother of
17 the fetus, if the mother is younger than 18 years of age at the time
18 of the partial-birth abortion, may bring a civil action to obtain
19 appropriate relief, including:

20 (1) money damages for physical injury, mental anguish,
21 and emotional distress; and

22 (2) exemplary damages equal to three times the cost of
23 the partial-birth abortion.

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

26 (1) the person consented to the partial-birth
27 abortion; or

1 (2) the person's criminally injurious conduct resulted
2 in the pregnancy.

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

10 (b) The board's findings under Subsection (a) are
11 admissible in any court proceeding against the physician arising
12 from that conduct. On the physician's motion, the court shall delay
13 the beginning of a criminal or civil trial for not more than 60 days
14 for the hearing to be held under Subsection (a).

15 Sec. 171.106. APPLICABILITY. A woman on whom a
16 partial-birth abortion is performed or attempted in violation of
17 this subchapter may not be prosecuted under this subchapter or for
18 conspiracy to commit a violation of this subchapter.

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

21 CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

22 Sec. 173.001. DEFINITIONS. In this chapter:

23 (1) "Authorized facility" means:

24 (A) a hospital licensed under Chapter 241;

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

27 (C) an ambulatory surgical center licensed under

1 Chapter 243; or

2 (D) a birthing center licensed under Chapter 244.

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

8 Sec. 173.002. APPLICABILITY. This chapter does not apply
9 to:

10 (1) human fetal tissue obtained for diagnostic or
11 pathological testing;

12 (2) human fetal tissue obtained for a criminal
13 investigation;

14 (3) human fetal tissue or human tissue obtained during
15 pregnancy or at delivery of a child, provided the tissue is obtained
16 by an accredited public or private institution of higher education
17 for use in research approved by an institutional review board or
18 another appropriate board, committee, or body charged with
19 oversight applicable to the research; or

20 (4) cell lines derived from human fetal tissue or
21 human tissue existing on September 1, 2017, that are used by an
22 accredited public or private institution of higher education in
23 research approved by an institutional review board or another
24 appropriate board, committee, or body charged with oversight
25 applicable to the research.

26 Sec. 173.003. ENFORCEMENT. (a) The department shall
27 enforce this chapter.

1 (b) The attorney general, on request of the department or a
2 local law enforcement agency, may assist in the investigation of a
3 violation of this chapter.

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

6 Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only
7 an authorized facility may donate human fetal tissue. An
8 authorized facility may donate human fetal tissue only to an
9 accredited public or private institution of higher education for
10 use in research approved by an institutional review board or
11 another appropriate board, committee, or body charged with
12 oversight applicable to the research.

13 (b) An authorized facility may not donate human fetal tissue
14 obtained from an elective abortion.

15 Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized
16 facility may not donate human fetal tissue under this chapter
17 unless the facility has obtained the written, voluntary, and
18 informed consent of the woman from whose pregnancy the fetal tissue
19 is obtained. The consent must be provided on a standard form
20 prescribed by the department.

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

23 (1) offers a woman monetary or other consideration to:

24 (A) have an abortion for the purpose of donating
25 human fetal tissue; or

26 (B) consent to the donation of human fetal
27 tissue; or

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

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

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

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

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

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

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

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

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

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

24 (2) the accredited public or private institution of
25 higher education that received the donation.

26 SECTION 3. Subtitle B, Title 8, Health and Safety Code, is
27 amended by adding Chapter 697 to read as follows:

1 CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

2 Sec. 697.001. PURPOSE. The purpose of this chapter is to
3 express the state's profound respect for the life of the unborn by
4 providing for a dignified disposition of embryonic and fetal tissue
5 remains.

6 Sec. 697.002. DEFINITIONS. In this chapter:

7 (1) "Cremation" means the irreversible process of
8 reducing remains to bone fragments through direct flame, extreme
9 heat, and evaporation.

10 (2) "Department" means the Department of State Health
11 Services.

12 (3) "Embryonic and fetal tissue remains" means an
13 embryo, a fetus, body parts, or organs from a pregnancy that
14 terminates in the death of the embryo or fetus and for which the
15 issuance of a fetal death certificate is not required by state law.
16 The term does not include the umbilical cord, placenta, gestational
17 sac, blood, or body fluids.

18 (4) "Executive commissioner" means the executive
19 commissioner of the Health and Human Services Commission.

20 (5) "Incineration" means the process of burning
21 remains in an incinerator.

22 (6) "Interment" means the disposition of remains by
23 entombment, burial, or placement in a niche.

24 (7) "Steam disinfection" means the act of subjecting
25 remains to steam under pressure to disinfect the remains.

26 Sec. 697.003. APPLICABILITY OF OTHER LAW. Embryonic and
27 fetal tissue remains are not pathological waste under state law.

1 Unless otherwise provided by this chapter, Chapters 711 and 716 of
2 this code and Chapter 651, Occupations Code, do not apply to the
3 disposition of embryonic and fetal tissue remains.

4 Sec. 697.004. DISPOSITION OF EMBRYONIC AND FETAL TISSUE
5 REMAINS. (a) Subject to Section 241.010, a health care facility in
6 this state that provides health or medical care to a pregnant woman
7 shall dispose of embryonic and fetal tissue remains that are passed
8 or delivered at the facility by:

- 9 (1) interment;
10 (2) cremation;
11 (3) incineration followed by interment; or
12 (4) steam disinfection followed by interment.

13 (b) The ashes resulting from the cremation or incineration
14 of embryonic and fetal tissue remains:

- 15 (1) may be interred or scattered in any manner as
16 authorized by law for human remains; and
17 (2) may not be placed in a landfill.

18 (c) A health care facility responsible for disposing of
19 embryonic and fetal tissue remains may coordinate with an entity in
20 the registry established under Section 697.005 in an effort to
21 offset the cost associated with burial or cremation of the
22 embryonic and fetal tissue remains of an unborn child.

23 (d) Notwithstanding any other law, the umbilical cord,
24 placenta, gestational sac, blood, or body fluids from a pregnancy
25 terminating in the death of the embryo or fetus for which the
26 issuance of a fetal death certificate is not required by state law
27 may be disposed of in the same manner as and with the embryonic and

1 fetal tissue remains from that same pregnancy as authorized by this
2 chapter.

3 Sec. 697.005. BURIAL OR CREMATION ASSISTANCE REGISTRY. The
4 department shall:

5 (1) establish and maintain a registry of:

6 (A) participating funeral homes and cemeteries
7 willing to provide free common burial or low-cost private burial;
8 and

9 (B) private nonprofit organizations that
10 register with the department to provide financial assistance for
11 the costs associated with burial or cremation of the embryonic and
12 fetal tissue remains of an unborn child; and

13 (2) make the registry information available on request
14 to a physician, health care facility, or agent of a physician or
15 health care facility.

16 Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The
17 department shall develop a grant program that uses private
18 donations to provide financial assistance for the costs associated
19 with disposing of embryonic and fetal tissue remains.

20 Sec. 697.007. SUSPENSION OR REVOCATION OF LICENSE. The
21 department may suspend or revoke the license of a health care
22 facility that violates this chapter or a rule adopted under this
23 chapter.

24 Sec. 697.008. CIVIL PENALTY. (a) A person that violates
25 this chapter or a rule adopted under this chapter is liable for a
26 civil penalty in an amount of \$1,000 for each violation.

27 (b) The attorney general, at the request of the department,

1 may sue to collect the civil penalty. The attorney general may
2 recover reasonable expenses incurred in collecting the civil
3 penalty, including court costs, reasonable attorney's fees,
4 investigation costs, witness fees, and disposition expenses.

5 Sec. 697.009. RULES. The executive commissioner shall
6 adopt rules to implement this chapter.

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

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

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

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

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

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

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

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

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

1 (8) purchases, sells, barter, or uses, or offers to
2 purchase, sell, barter, or use, a medical degree, license,
3 certificate, or diploma, or a transcript of a license, certificate,
4 or diploma in or incident to an application to the board for a
5 license to practice medicine;

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

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

12 (A) fraudulently purchased or issued;

13 (B) counterfeited; or

14 (C) materially altered;

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

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

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

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

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

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

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

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

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

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

15 (A) the abortion is necessary to prevent the
16 death of the woman;

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

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

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

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

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

6 SECTION 5. Section 164.055(b), Occupations Code, is amended
7 to read as follows:

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

15 SECTION 6. Section 48.02(a), Penal Code, is amended to read
16 as follows:

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

23 SECTION 7. Chapter 48, Penal Code, is amended by adding
24 Section 48.03 to read as follows:

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

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

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

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

7 (1) is an employee of or under contract with an
8 accredited public or private institution of higher education; and

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

12 (e) This section does not apply to:

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

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

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

21 (4) human fetal tissue or human tissue acquired during
22 pregnancy or at delivery of a child, provided the tissue is acquired
23 by an accredited public or private institution of higher education
24 for use in research approved by an institutional review board or
25 another appropriate board, committee, or body charged with
26 oversight applicable to the research; or

27 (5) cell lines derived from human fetal tissue or

1 human tissue existing on September 1, 2017, that are used by an
2 accredited public or private institution of higher education in
3 research approved by an institutional review board or another
4 appropriate board, committee, or body charged with oversight
5 applicable to the research.

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

10 SECTION 8. (a) Not later than December 1, 2017, the
11 executive commissioner of the Health and Human Services Commission
12 shall adopt any rules necessary to implement Chapters 173 and 697,
13 Health and Safety Code, as added by this Act.

14 (b) The Department of State Health Services shall:

15 (1) not later than October 1, 2017, establish the
16 grant program required by Section 697.006, Health and Safety Code,
17 as added by this Act;

18 (2) not later than December 1, 2017, prescribe the
19 standard consent form required by Section 173.006, Health and
20 Safety Code, as added by this Act; and

21 (3) not later than February 1, 2018, begin to award
22 grants under the grant program described by Subdivision (1) of this
23 subsection.

24 SECTION 9. (a) Subchapter F, Chapter 171, Health and
25 Safety Code, as added by this Act, applies only to an abortion
26 performed on or after the effective date of this Act. An abortion
27 performed before the effective date of this Act is governed by the

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

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

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

11 (d) Chapter 697, Health and Safety Code, as added by this
12 Act, applies only to the disposition of embryonic and fetal tissue
13 remains that occurs on or after February 1, 2018. The disposition
14 of embryonic and fetal tissue remains that occurs before February
15 1, 2018, is governed by the law in effect immediately before the
16 effective date of this Act, and the former law is continued in
17 effect for that purpose.

18 (e) Chapter 48, Penal Code, as amended by this Act, applies
19 only to an offense committed on or after the effective date of this
20 Act. An offense committed before the effective date of this Act is
21 governed by the law in effect on the date the offense was committed,
22 and the former law is continued in effect for that purpose. For
23 purposes of this subsection, an offense was committed before the
24 effective date of this Act if any element of the offense occurred
25 before that date.

26 SECTION 10. This Act takes effect September 1, 2017.