

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, human fetal tissue, and other tissue resulting from pregnancy; 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.

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 30 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 AND OTHER TISSUE

22 RESULTING FROM PREGNANCY

23 Sec. 173.001. DEFINITIONS. In this chapter:

24 (1) "Authorized facility" means:

25 (A) a hospital licensed under Chapter 241;

26 (B) an ambulatory surgical center licensed under
27 Chapter 243; or

1 (C) a birthing center licensed under Chapter 244.

2 (2) "Human fetal tissue" means any gestational human
3 organ, cell, or tissue from an unborn child.

4 Sec. 173.002. DEPARTMENT ENFORCEMENT. The department shall
5 enforce this chapter.

6 Sec. 173.003. PROHIBITED DONATION. A person may not donate
7 human fetal tissue, placenta, or an umbilical cord except as
8 authorized by this chapter.

9 Sec. 173.004. DONATION BY AUTHORIZED FACILITY. (a) Only an
10 authorized facility may donate human fetal tissue. An authorized
11 facility may donate human fetal tissue only to an accredited
12 university for use in research that has been approved by an
13 institutional review board.

14 (b) Only an authorized facility may donate placenta or an
15 umbilical cord.

16 (c) An authorized facility may not donate human fetal
17 tissue, placenta, or an umbilical cord that is obtained from an
18 elective abortion.

19 Sec. 173.005. INFORMED CONSENT REQUIRED. An authorized
20 facility may not donate human fetal tissue under this chapter
21 unless the facility has obtained the written, voluntary, and
22 informed consent of the woman from whose pregnancy the fetal tissue
23 is obtained. The consent must be provided on a standard form
24 prescribed by the department.

25 Sec. 173.006. CRIMINAL PENALTY. (a) A person commits an
26 offense if the person:

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

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

3 (B) consent to the donation of human fetal
4 tissue; or

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

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

9 Sec. 173.007. 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 173.005; or

15 (2) if for a woman who was younger than 18 years of age
16 on the date consent was obtained under Section 173.005, the later
17 of:

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

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

21 Sec. 173.008. ANNUAL REPORT. An authorized facility that
22 donates human fetal tissue under this chapter shall submit an
23 annual report to the department that includes for each donation:

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

25 (2) the recipient of the donation.

26 SECTION 3. Section [164.052](#)(a), Occupations Code, is amended
27 to read as follows:

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

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

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

8 (3) commits fraud or deception in taking or passing an
9 examination;

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

12 (5) commits unprofessional or dishonorable conduct
13 that is likely to deceive or defraud the public, as provided by
14 Section [164.053](#), or injure the public;

15 (6) uses an advertising statement that is false,
16 misleading, or deceptive;

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

20 (8) purchases, sells, barters, or uses, or offers to
21 purchase, sell, barter, or use, a medical degree, license,
22 certificate, or diploma, or a transcript of a license, certificate,
23 or diploma in or incident to an application to the board for a
24 license to practice medicine;

25 (9) alters, with fraudulent intent, a medical license,
26 certificate, or diploma, or a transcript of a medical license,
27 certificate, or diploma;

1 (10) uses a medical license, certificate, or diploma,
2 or a transcript of a medical license, certificate, or diploma that
3 has been:

4 (A) fraudulently purchased or issued;

5 (B) counterfeited; or

6 (C) materially altered;

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

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

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

15 (14) directly or indirectly employs a person whose
16 license to practice medicine has been suspended, canceled, or
17 revoked;

18 (15) associates in the practice of medicine with a
19 person:

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

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

24 (16) performs or procures a criminal abortion, aids or
25 abets in the procuring of a criminal abortion, attempts to perform
26 or procure a criminal abortion, or attempts to aid or abet the
27 performance or procurement of a criminal abortion;

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

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

7 (A) the abortion is necessary to prevent the
8 death of the woman;

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

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

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

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

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

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

27 (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" means any gestational human organ, cell, or tissue from an unborn child.

(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 valuable consideration.

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

(d) It is an exception to the application of this section that the actor:

(1) is an employee of or under contract with an

1 accredited university; and

2 (2) acquires, receives, or transfers human fetal
3 tissue solely for the purpose of fulfilling a donation authorized
4 by Section 173.004, Health and Safety Code.

5 SECTION 7. Not later than December 1, 2017:

6 (1) the Department of State Health Services shall
7 prescribe the standard consent form required by Section 173.005,
8 Health and Safety Code, as added by this Act; and

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

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

18 (b) Sections 173.002, 173.003, 173.004, and 173.005, Health
19 and Safety Code, as added by this Act, apply to a donation of human
20 fetal tissue, placenta, or an umbilical cord that occurs on or after
21 the effective date of this Act, regardless of whether the human
22 fetal tissue, placenta, or umbilical cord was acquired before, on,
23 or after that date.

24 (c) An authorized facility is not required to make an
25 initial annual report under Section 173.008, Health and Safety
26 Code, as added by this Act, before January 1, 2019.

27 (d) Chapter 48, Penal Code, as amended by this Act, applies

1 only to an offense committed on or after the effective date of this
2 Act. An offense committed before the effective date of this Act is
3 governed by the law in effect on the date the offense was committed,
4 and the former law is continued in effect for that purpose. For
5 purposes of this section, an offense was committed before the
6 effective date of this Act if any element of the offense occurred
7 before that date.

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