

1-1 By: Schwertner, et al. S.B. No. 8  
 1-2 (In the Senate - Filed November 17, 2016; January 24, 2017,  
 1-3 read first time and referred to Committee on Health & Human  
 1-4 Services; March 7, 2017, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 7, Nays 1;  
 1-6 March 7, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14		X		
1-15	X			
1-16	X			
1-17			X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 8 By: Schwertner

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to certain prohibited abortions and the treatment and  
 1-22 disposition of a human fetus and human fetal tissue; creating a  
 1-23 civil cause of action; creating offenses.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Chapter 171, Health and Safety Code, is amended  
 1-26 by adding Subchapter F to read as follows:

1-27 SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

1-28 Sec. 171.101. DEFINITIONS. In this subchapter:

1-29 (1) "Partial-birth abortion" means an abortion in  
 1-30 which the person performing the abortion:

1-31 (A) for the purpose of performing an overt act  
 1-32 that the person knows will kill the partially delivered living  
 1-33 fetus, deliberately and intentionally vaginally delivers a living  
 1-34 fetus until:

1-35 (i) for a head-first presentation, the  
 1-36 entire fetal head is outside the body of the mother; or

1-37 (ii) for a breech presentation, any part of  
 1-38 the fetal trunk past the navel is outside the body of the mother;  
 1-39 and

1-40 (B) performs the overt act described in Paragraph  
 1-41 (A), other than completion of delivery, that kills the partially  
 1-42 delivered living fetus.

1-43 (2) "Physician" means an individual who is licensed to  
 1-44 practice medicine in this state, including a medical doctor and a  
 1-45 doctor of osteopathic medicine.

1-46 Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A  
 1-47 physician or other person may not knowingly perform a partial-birth  
 1-48 abortion.

1-49 (b) Subsection (a) does not apply to a physician who  
 1-50 performs a partial-birth abortion that is necessary to save the  
 1-51 life of a mother whose life is endangered by a physical disorder,  
 1-52 physical illness, or physical injury, including a life-endangering  
 1-53 physical condition caused by or arising from the pregnancy.

1-54 Sec. 171.103. CRIMINAL PENALTY. A person who violates  
 1-55 Section 171.102 commits an offense. An offense under this section  
 1-56 is a state jail felony.

1-57 Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by  
 1-58 Subsection (b), the father of the fetus or a parent of the mother of  
 1-59 the fetus, if the mother is younger than 18 years of age at the time  
 1-60 of the partial-birth abortion, may bring a civil action to obtain

2-1 appropriate relief, including:

2-2 (1) money damages for physical injury, mental anguish,  
2-3 and emotional distress; and

2-4 (2) exemplary damages equal to three times the cost of  
2-5 the partial-birth abortion.

2-6 (b) A person may not bring or maintain an action under this  
2-7 section if:

2-8 (1) the person consented to the partial-birth  
2-9 abortion; or

2-10 (2) the person's criminally injurious conduct resulted  
2-11 in the pregnancy.

2-12 Sec. 171.105. HEARING. (a) A physician who is the subject  
2-13 of a criminal or civil action for a violation of Section 171.102 may  
2-14 request a hearing before the Texas Medical Board on whether the  
2-15 physician's conduct was necessary to save the life of a mother whose  
2-16 life was endangered by a physical disorder, physical illness, or  
2-17 physical injury, including a life-endangering physical condition  
2-18 caused by or arising from the pregnancy.

2-19 (b) The board's findings under Subsection (a) are  
2-20 admissible in any court proceeding against the physician arising  
2-21 from that conduct. On the physician's motion, the court shall delay  
2-22 the beginning of a criminal or civil trial for not more than 60 days  
2-23 for the hearing to be held under Subsection (a).

2-24 Sec. 171.106. APPLICABILITY. A woman on whom a  
2-25 partial-birth abortion is performed or attempted in violation of  
2-26 this subchapter may not be prosecuted under this subchapter or for  
2-27 conspiracy to commit a violation of this subchapter.

2-28 SECTION 2. Subtitle H, Title 2, Health and Safety Code, is  
2-29 amended by adding Chapter 173 to read as follows:

2-30 CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

2-31 Sec. 173.001. DEFINITIONS. In this chapter:

2-32 (1) "Authorized facility" means:

2-33 (A) a hospital licensed under Chapter 241;

2-34 (B) a hospital maintained or operated by this  
2-35 state or an agency of this state;

2-36 (C) an ambulatory surgical center licensed under  
2-37 Chapter 243; or

2-38 (D) a birthing center licensed under Chapter 244.

2-39 (2) "Human fetal tissue" means any gestational human  
2-40 organ, cell, or tissue from an unborn child. The term does not  
2-41 include supporting cells or tissue derived from a pregnancy,  
2-42 associated maternal tissue that is not part of the unborn child, the  
2-43 umbilical cord, or the placenta.

2-44 Sec. 173.002. APPLICABILITY. This chapter does not apply  
2-45 to:

2-46 (1) human fetal tissue obtained for diagnostic or  
2-47 pathological testing;

2-48 (2) human fetal tissue obtained for a criminal  
2-49 investigation; or

2-50 (3) human fetal tissue or human tissue obtained during  
2-51 pregnancy or at delivery of a child, provided the tissue is obtained  
2-52 by an accredited university for use in research approved by an  
2-53 institutional review board or another appropriate university  
2-54 board, committee, or body charged with oversight applicable to the  
2-55 research.

2-56 Sec. 173.003. ENFORCEMENT. (a) The department shall  
2-57 enforce this chapter.

2-58 (b) The attorney general, on request of the department or a  
2-59 local law enforcement agency, may assist in the investigation of a  
2-60 violation of this chapter.

2-61 Sec. 173.004. PROHIBITED DONATION. A person may not donate  
2-62 human fetal tissue except as authorized by this chapter.

2-63 Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only  
2-64 an authorized facility may donate human fetal tissue. An  
2-65 authorized facility may donate human fetal tissue only to an  
2-66 accredited university for use in research approved by an  
2-67 institutional review board or another appropriate university  
2-68 board, committee, or body charged with oversight applicable to the  
2-69 research.

3-1 (b) An authorized facility may not donate human fetal tissue  
3-2 obtained from an elective abortion.

3-3 Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized  
3-4 facility may not donate human fetal tissue under this chapter  
3-5 unless the facility has obtained the written, voluntary, and  
3-6 informed consent of the woman from whose pregnancy the fetal tissue  
3-7 is obtained. The consent must be provided on a standard form  
3-8 prescribed by the department.

3-9 Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an  
3-10 offense if the person:

3-11 (1) offers a woman monetary or other consideration to:

3-12 (A) have an abortion for the purpose of donating  
3-13 human fetal tissue; or

3-14 (B) consent to the donation of human fetal  
3-15 tissue; or

3-16 (2) knowingly or intentionally solicits or accepts  
3-17 tissue from a fetus gestated solely for research purposes.

3-18 (b) An offense under this section is a Class A misdemeanor  
3-19 punishable by a fine of not more than \$10,000.

3-20 (c) With the consent of the appropriate local county or  
3-21 district attorney, the attorney general has concurrent  
3-22 jurisdiction with that consenting local prosecutor to prosecute an  
3-23 offense under this section.

3-24 Sec. 173.008. RECORD RETENTION. Unless another law  
3-25 requires a longer period of record retention, an authorized  
3-26 facility may not dispose of any medical record relating to a woman  
3-27 who consents to the donation of human fetal tissue before:

3-28 (1) the seventh anniversary of the date consent was  
3-29 obtained under Section 173.006; or

3-30 (2) if the woman was younger than 18 years of age on  
3-31 the date consent was obtained under Section 173.006, the later of:

3-32 (A) the woman's 23rd birthday; or

3-33 (B) the seventh anniversary of the date consent  
3-34 was obtained.

3-35 Sec. 173.009. ANNUAL REPORT. An authorized facility that  
3-36 donates human fetal tissue under this chapter shall submit an  
3-37 annual report to the department that includes for each donation:

3-38 (1) the specific type of fetal tissue donated; and

3-39 (2) the accredited university that received the  
3-40 donation.

3-41 SECTION 3. Section 164.052(a), Occupations Code, is amended  
3-42 to read as follows:

3-43 (a) A physician or an applicant for a license to practice  
3-44 medicine commits a prohibited practice if that person:

3-45 (1) submits to the board a false or misleading  
3-46 statement, document, or certificate in an application for a  
3-47 license;

3-48 (2) presents to the board a license, certificate, or  
3-49 diploma that was illegally or fraudulently obtained;

3-50 (3) commits fraud or deception in taking or passing an  
3-51 examination;

3-52 (4) uses alcohol or drugs in an intemperate manner  
3-53 that, in the board's opinion, could endanger a patient's life;

3-54 (5) commits unprofessional or dishonorable conduct  
3-55 that is likely to deceive or defraud the public, as provided by  
3-56 Section 164.053, or injure the public;

3-57 (6) uses an advertising statement that is false,  
3-58 misleading, or deceptive;

3-59 (7) advertises professional superiority or the  
3-60 performance of professional service in a superior manner if that  
3-61 advertising is not readily subject to verification;

3-62 (8) purchases, sells, barter, or uses, or offers to  
3-63 purchase, sell, barter, or use, a medical degree, license,  
3-64 certificate, or diploma, or a transcript of a license, certificate,  
3-65 or diploma in or incident to an application to the board for a  
3-66 license to practice medicine;

3-67 (9) alters, with fraudulent intent, a medical license,  
3-68 certificate, or diploma, or a transcript of a medical license,  
3-69 certificate, or diploma;

4-1 (10) uses a medical license, certificate, or diploma,  
4-2 or a transcript of a medical license, certificate, or diploma that  
4-3 has been:

4-4 (A) fraudulently purchased or issued;

4-5 (B) counterfeited; or

4-6 (C) materially altered;

4-7 (11) impersonates or acts as proxy for another person  
4-8 in an examination required by this subtitle for a medical license;

4-9 (12) engages in conduct that subverts or attempts to  
4-10 subvert an examination process required by this subtitle for a  
4-11 medical license;

4-12 (13) impersonates a physician or permits another to  
4-13 use the person's license or certificate to practice medicine in  
4-14 this state;

4-15 (14) directly or indirectly employs a person whose  
4-16 license to practice medicine has been suspended, canceled, or  
4-17 revoked;

4-18 (15) associates in the practice of medicine with a  
4-19 person:

4-20 (A) whose license to practice medicine has been  
4-21 suspended, canceled, or revoked; or

4-22 (B) who has been convicted of the unlawful  
4-23 practice of medicine in this state or elsewhere;

4-24 (16) performs or procures a criminal abortion, aids or  
4-25 abets in the procuring of a criminal abortion, attempts to perform  
4-26 or procure a criminal abortion, or attempts to aid or abet the  
4-27 performance or procurement of a criminal abortion;

4-28 (17) directly or indirectly aids or abets the practice  
4-29 of medicine by a person, partnership, association, or corporation  
4-30 that is not licensed to practice medicine by the board;

4-31 (18) performs an abortion on a woman who is pregnant  
4-32 with a viable unborn child during the third trimester of the  
4-33 pregnancy unless:

4-34 (A) the abortion is necessary to prevent the  
4-35 death of the woman;

4-36 (B) the viable unborn child has a severe,  
4-37 irreversible brain impairment; or

4-38 (C) the woman is diagnosed with a significant  
4-39 likelihood of suffering imminent severe, irreversible brain damage  
4-40 or imminent severe, irreversible paralysis;

4-41 (19) performs an abortion on an unemancipated minor  
4-42 without the written consent of the child's parent, managing  
4-43 conservator, or legal guardian or without a court order, as  
4-44 provided by Section 33.003 or 33.004, Family Code, unless the  
4-45 abortion is necessary due to a medical emergency, as defined by  
4-46 Section 171.002, Health and Safety Code;

4-47 (20) otherwise performs an abortion on an  
4-48 unemancipated minor in violation of Chapter 33, Family Code; or

4-49 (21) performs or induces or attempts to perform or  
4-50 induce an abortion in violation of Subchapter C or F, Chapter 171,  
4-51 Health and Safety Code.

4-52 SECTION 4. Section 164.055(b), Occupations Code, is amended  
4-53 to read as follows:

4-54 (b) The sanctions provided by Subsection (a) are in addition  
4-55 to any other grounds for refusal to admit persons to examination  
4-56 under this subtitle or to issue a license or renew a license to  
4-57 practice medicine under this subtitle. The criminal penalties  
4-58 provided by Section 165.152 do not apply to a violation of Section  
4-59 170.002, Health and Safety Code, or Subchapter C or F, Chapter 171,  
4-60 Health and Safety Code.

4-61 SECTION 5. Section 48.02(a), Penal Code, is amended to read  
4-62 as follows:

4-63 (a) In this section, "human [Human] organ" means the human  
4-64 kidney, liver, heart, lung, pancreas, eye, bone, skin, [fetal  
4-65 tissue], or any other human organ or tissue, but does not include  
4-66 hair or blood, blood components (including plasma), blood  
4-67 derivatives, or blood reagents. The term does not include human  
4-68 fetal tissue as defined by Section 48.03.

4-69 SECTION 6. Chapter 48, Penal Code, is amended by adding

5-1 Section 48.03 to read as follows:

5-2 Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL  
 5-3 TISSUE. (a) In this section, "human fetal tissue" has the meaning  
 5-4 assigned by Section 173.001, Health and Safety Code.

5-5 (b) A person commits an offense if the person knowingly  
 5-6 offers to buy, offers to sell, acquires, receives, sells, or  
 5-7 otherwise transfers any human fetal tissue for economic benefit.

5-8 (c) An offense under this section is a state jail felony.

5-9 (d) It is a defense to prosecution under this section that  
 5-10 the actor:

5-11 (1) is an employee of or under contract with an  
 5-12 accredited university; and

5-13 (2) acquires, receives, or transfers human fetal  
 5-14 tissue solely for the purpose of fulfilling a donation authorized  
 5-15 by Section 173.005, Health and Safety Code.

5-16 (e) This section does not apply to:

5-17 (1) human fetal tissue acquired, received, or  
 5-18 transferred solely for diagnostic or pathological testing;

5-19 (2) human fetal tissue acquired, received, or  
 5-20 transferred solely for the purposes of a criminal investigation;

5-21 (3) human fetal tissue acquired, received, or  
 5-22 transferred solely for the purpose of disposing of the tissue in  
 5-23 accordance with state law or rules applicable to the disposition of  
 5-24 human remains; or

5-25 (4) human fetal tissue or human tissue acquired during  
 5-26 pregnancy or at delivery of a child, provided the tissue is acquired  
 5-27 by an accredited university for use in research approved by an  
 5-28 institutional review board or another appropriate university  
 5-29 board, committee, or body charged with oversight applicable to the  
 5-30 research.

5-31 (f) With the consent of the appropriate local county or  
 5-32 district attorney, the attorney general has concurrent  
 5-33 jurisdiction with that consenting local prosecutor to prosecute an  
 5-34 offense under this section.

5-35 SECTION 7. Not later than December 1, 2017:

5-36 (1) the Department of State Health Services shall  
 5-37 prescribe the standard consent form required by Section 173.006,  
 5-38 Health and Safety Code, as added by this Act; and

5-39 (2) the executive commissioner of the Health and Human  
 5-40 Services Commission shall adopt any rules necessary to implement  
 5-41 Chapter 173, Health and Safety Code, as added by this Act.

5-42 SECTION 8. (a) Subchapter F, Chapter 171, Health and  
 5-43 Safety Code, as added by this Act, applies only to an abortion  
 5-44 performed on or after the effective date of this Act. An abortion  
 5-45 performed before the effective date of this Act is governed by the  
 5-46 law in effect immediately before the effective date of this Act, and  
 5-47 that law is continued in effect for that purpose.

5-48 (b) Sections 173.003, 173.004, 173.005, and 173.006, Health  
 5-49 and Safety Code, as added by this Act, apply to a donation of human  
 5-50 fetal tissue that occurson or after the effective date of this Act,  
 5-51 regardless of whether the human fetal tissue was acquired before,  
 5-52 on, or after that date.

5-53 (c) An authorized facility is not required to make an  
 5-54 initial annual report under Section 173.009, Health and Safety  
 5-55 Code, as added by this Act, before January 1, 2019.

5-56 (d) Chapter 48, Penal Code, as amended by this Act, applies  
 5-57 only to an offense committed on or after the effective date of this  
 5-58 Act. An offense committed before the effective date of this Act is  
 5-59 governed by the law in effect on the date the offense was committed,  
 5-60 and the former law is continued in effect for that purpose. For  
 5-61 purposes of this section, an offense was committed before the  
 5-62 effective date of this Act if any element of the offense occurred  
 5-63 before that date.

5-64 SECTION 9. This Act takes effect September 1, 2017.

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