

By: Huffines, et al.

S.B. No. 258

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the disposition of embryonic and fetal tissue remains;
3 imposing a civil penalty.

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

5 SECTION 1. Section 171.002, Health and Safety Code, is
6 amended by adding Subdivision (2-a) to read as follows:

7 (2-a) "Embryonic and fetal tissue remains" has the
8 meaning assigned by Section 697.002.

9 SECTION 2. Section 171.012(a), Health and Safety Code, is
10 amended to read as follows:

11 (a) Consent to an abortion is voluntary and informed only
12 if:

13 (1) the physician who is to perform the abortion
14 informs the pregnant woman on whom the abortion is to be performed
15 of:

16 (A) the physician's name;

17 (B) the particular medical risks associated with
18 the particular abortion procedure to be employed, including, when
19 medically accurate:

20 (i) the risks of infection and hemorrhage;

21 (ii) the potential danger to a subsequent
22 pregnancy and of infertility; and

23 (iii) the possibility of increased risk of
24 breast cancer following an induced abortion and the natural

1 protective effect of a completed pregnancy in avoiding breast
2 cancer;

3 (C) the probable gestational age of the unborn
4 child at the time the abortion is to be performed; and

5 (D) the medical risks associated with carrying
6 the child to term;

7 (2) the physician who is to perform the abortion or the
8 physician's agent informs the pregnant woman that:

9 (A) medical assistance benefits may be available
10 for prenatal care, childbirth, and neonatal care;

11 (B) the father is liable for assistance in the
12 support of the child without regard to whether the father has
13 offered to pay for the abortion; and

14 (C) public and private agencies provide
15 pregnancy prevention counseling and medical referrals for
16 obtaining pregnancy prevention medications or devices, including
17 emergency contraception for victims of rape or incest;

18 (3) the physician who is to perform the abortion or the
19 physician's agent:

20 (A) provides the pregnant woman with the printed
21 materials described by Section [171.014](#); and

22 (B) informs the pregnant woman that those
23 materials:

24 (i) have been provided by the Department of
25 State Health Services;

26 (ii) are accessible on an Internet website
27 sponsored by the department;

1 (iii) describe the unborn child and list
2 agencies that offer alternatives to abortion; and

3 (iv) include a list of agencies that offer
4 sonogram services at no cost to the pregnant woman;

5 (4) the physician who is to perform the abortion or the
6 physician's agent:

7 (A) provides the pregnant woman with a
8 disposition of remains form described by Section 171.0161; and

9 (B) informs the pregnant woman that the form:

10 (i) is provided by the Department of State
11 Health Services;

12 (ii) is accessible on the department's
13 Internet website;

14 (iii) describes the options for the
15 disposition of the embryonic and fetal tissue remains; and

16 (iv) must be signed by the pregnant woman
17 and received by the physician before the abortion is performed;

18 (5) before any sedative or anesthesia is administered
19 to the pregnant woman and at least 24 hours before the abortion or
20 at least two hours before the abortion if the pregnant woman waives
21 this requirement by certifying that she currently lives 100 miles
22 or more from the nearest abortion provider that is a facility
23 licensed under Chapter 245 or a facility that performs more than 50
24 abortions in any 12-month period:

25 (A) the physician who is to perform the abortion
26 or an agent of the physician who is also a sonographer certified by
27 a national registry of medical sonographers performs a sonogram on

1 the pregnant woman on whom the abortion is to be performed;

2 (B) the physician who is to perform the abortion
3 displays the sonogram images in a quality consistent with current
4 medical practice in a manner that the pregnant woman may view them;

5 (C) the physician who is to perform the abortion
6 provides, in a manner understandable to a layperson, a verbal
7 explanation of the results of the sonogram images, including a
8 medical description of the dimensions of the embryo or fetus, the
9 presence of cardiac activity, and the presence of external members
10 and internal organs; and

11 (D) the physician who is to perform the abortion
12 or an agent of the physician who is also a sonographer certified by
13 a national registry of medical sonographers makes audible the heart
14 auscultation for the pregnant woman to hear, if present, in a
15 quality consistent with current medical practice and provides, in a
16 manner understandable to a layperson, a simultaneous verbal
17 explanation of the heart auscultation;

18 (6) [~~(5)~~] before receiving a sonogram under
19 Subdivision (5)(A) [~~(4)(A)~~] and before the abortion is performed
20 and before any sedative or anesthesia is administered, the pregnant
21 woman completes and certifies with her signature an election form
22 that states as follows:

23 "ABORTION AND SONOGRAM ELECTION

24 (1) THE INFORMATION AND PRINTED MATERIALS
25 DESCRIBED BY SECTIONS 171.012(a)(1)-(4)
26 [~~171.012(a)(1)-(3)~~], TEXAS HEALTH AND SAFETY CODE,
27 HAVE BEEN PROVIDED AND EXPLAINED TO ME.

1 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF
2 AN ABORTION.

3 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM
4 PRIOR TO RECEIVING AN ABORTION.

5 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW
6 THE SONOGRAM IMAGES.

7 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR
8 THE HEARTBEAT.

9 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO
10 HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I
11 CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

12 ___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT,
13 INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT
14 HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR
15 THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY
16 BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF
17 RETALIATION RESULTING IN SERIOUS BODILY INJURY.

18 ___ I AM A MINOR AND OBTAINING AN ABORTION IN
19 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER
20 CHAPTER 33, TEXAS FAMILY CODE.

21 ___ MY FETUS HAS AN IRREVERSIBLE MEDICAL
22 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE
23 DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL
24 FILE.

25 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL
26 AND WITHOUT COERCION.

27 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM

1 THE NEAREST ABORTION PROVIDER THAT IS A FACILITY
2 LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY
3 CODE, OR A FACILITY THAT PERFORMS MORE THAN 50
4 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

5 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100
6 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT
7 IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH
8 AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN
9 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE
10 REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS
11 PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY
12 PLACE OF RESIDENCE IS:_____.

13 _____
14 SIGNATURE DATE";

15 (7) [~~(6)~~] before the abortion is performed, the
16 physician who is to perform the abortion receives:

17 (A) a copy of the signed disposition of remains
18 form required by Subdivision (4); and

19 (B) a copy of the signed, written certification
20 required by Subdivision (6) [~~(5)~~]; and

21 (8) [~~(7)~~] the pregnant woman is provided the name of
22 each person who provides or explains the information required under
23 this subsection.

24 SECTION 3. Section 171.0121, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion
27 begins, a copy of both the signed disposition of remains form

1 required under Section 171.012(a)(4) and the signed, written
2 certification received by the physician under Section
3 171.012(a)(7) [~~171.012(a)(6)~~] must be placed in the pregnant
4 woman's medical records.

5 (b) A copy of the signed, written certification required
6 under Sections 171.012(a)(6) [~~171.012(a)(5)~~] and (7) [~~(6)~~] shall be
7 retained by the facility where the abortion is performed until:

8 (1) the seventh anniversary of the date it is signed;

9 or

10 (2) if the pregnant woman is a minor, the later of:

11 (A) the seventh anniversary of the date it is
12 signed; or

13 (B) the woman's 21st birthday.

14 SECTION 4. Sections 171.0122(b), (c), and (d), Health and
15 Safety Code, are amended to read as follows:

16 (b) A pregnant woman may choose not to view the sonogram
17 images required to be provided to and reviewed with the pregnant
18 woman under Section 171.012(a)(5) [~~171.012(a)(4)~~].

19 (c) A pregnant woman may choose not to hear the heart
20 auscultation required to be provided to and reviewed with the
21 pregnant woman under Section 171.012(a)(5) [~~171.012(a)(4)~~].

22 (d) A pregnant woman may choose not to receive the verbal
23 explanation of the results of the sonogram images under Section
24 171.012(a)(5)(C) [~~171.012(a)(4)(C)~~] if:

25 (1) the woman's pregnancy is a result of a sexual
26 assault, incest, or other violation of the Penal Code that has been
27 reported to law enforcement authorities or that has not been

1 reported because she has a reason that she declines to reveal
2 because she reasonably believes that to do so would put her at risk
3 of retaliation resulting in serious bodily injury;

4 (2) the woman is a minor and obtaining an abortion in
5 accordance with judicial bypass procedures under Chapter 33, Family
6 Code; or

7 (3) the fetus has an irreversible medical condition or
8 abnormality, as previously identified by reliable diagnostic
9 procedures and documented in the woman's medical file.

10 SECTION 5. The heading to Section 171.013, Health and
11 Safety Code, is amended to read as follows:

12 Sec. 171.013. DISTRIBUTION OF STATE MATERIALS AND FORM.

13 SECTION 6. Section 171.013(a), Health and Safety Code, is
14 amended to read as follows:

15 (a) The physician or the physician's agent shall furnish
16 copies of the materials described by Section 171.014 and the form
17 described by Section 171.0161 to the pregnant woman at least 24
18 hours before the abortion is to be performed and shall direct the
19 pregnant woman to the Internet website required to be published
20 under Section 171.014(e). The physician or the physician's agent
21 may furnish the materials and form to the pregnant woman by mail if
22 the materials and form are mailed, restricted delivery to
23 addressee, at least 72 hours before the abortion is to be performed.

24 SECTION 7. Subchapter B, Chapter 171, Health and Safety
25 Code, is amended by adding Section 171.0161 to read as follows:

26 Sec. 171.0161. DISPOSITION OF EMBRYONIC AND FETAL TISSUE
27 REMAINS: FORM; NONPROFIT ORGANIZATION ASSISTANCE REGISTRY; RULES.

1 (a) The department shall develop and maintain a form that notifies
2 a pregnant woman of the disposition methods for embryonic and fetal
3 tissue remains.

4 (b) The form must include:

5 (1) a statement describing the disposition methods for
6 embryonic and fetal tissue remains authorized by Chapter 697; and

7 (2) a statement that the pregnant woman may privately
8 dispose of the embryonic and fetal tissue remains of an unborn child
9 in a manner that complies with Chapter 697 but may be held
10 financially responsible for the health care facility's reasonable
11 costs of preparing the remains.

12 (c) The form must be:

13 (1) in English and Spanish;

14 (2) easily comprehensible; and

15 (3) in a large, clearly legible typeface.

16 (d) The department shall post the form on the department's
17 Internet website.

18 (e) The department shall:

19 (1) establish and maintain a registry of:

20 (A) participating funeral homes and cemeteries
21 willing to provide free or low-cost disposition of embryonic and
22 fetal tissue remains that complies with Chapter 697; and

23 (B) private nonprofit organizations that
24 register with the department to provide financial assistance for
25 the costs associated with the disposition of the embryonic and
26 fetal tissue remains of an unborn child; and

27 (2) make the registry information available on request

1 to a physician, physician's agent, or pregnant woman electing to
2 privately dispose of the embryonic and fetal tissue remains.

3 (f) The executive commissioner shall adopt rules to
4 implement this section, including rules for the collection,
5 storage, handling, and movement of embryonic and fetal tissue
6 remains.

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

9 CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

10 Sec. 697.001. PURPOSE. The purpose of this chapter is to
11 express the state's profound respect for the life of the unborn by
12 providing for a dignified final disposition of embryonic and fetal
13 tissue remains.

14 Sec. 697.002. DEFINITIONS. In this chapter:

15 (1) "Cremation" means the irreversible process of
16 reducing remains to ashes or bone fragments through extreme heat
17 and evaporation.

18 (2) "Department" means the Department of State Health
19 Services.

20 (3) "Embryonic and fetal tissue remains" means an
21 embryo, a fetus, body parts, or organs from a pregnancy for which
22 the issuance of a fetal death certificate is not required by law.
23 The term does not include the umbilical cord, placenta, gestational
24 sac, blood, or body fluids.

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

27 (5) "Incineration" means the process of burning

1 remains in an incinerator.

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

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

6 Sec. 697.003. APPLICABILITY OF CHAPTER. This chapter does
7 not apply to embryonic and fetal tissue remains:

8 (1) expelled or removed from a pregnant woman who is
9 not at the time of expulsion or removal in a health care facility;

10 (2) sent to a clinical, diagnostic, pathological, or
11 biomedical research laboratory for medical testing;

12 (3) sent to a forensic laboratory for testing related
13 to a criminal investigation; or

14 (4) donated for research, provided the donation
15 complies with the laws of this state.

16 Sec. 697.004. APPLICABILITY OF OTHER LAW. Embryonic and
17 fetal tissue remains are not pathological waste. Except as
18 otherwise provided by this chapter, Chapters 711 and 716 of this
19 code and Chapter 651, Occupations Code, do not apply to the
20 disposition of embryonic and fetal tissue remains.

21 Sec. 697.005. DISPOSITION OF EMBRYONIC AND FETAL TISSUE
22 REMAINS. (a) A health care facility in this state that provides
23 health or medical care to a pregnant woman shall dispose of
24 embryonic and fetal tissue remains related to that care by:

25 (1) interment;

26 (2) cremation or incineration; or

27 (3) steam disinfection followed by interment.

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

3 (1) may be interred or scattered in any manner as
4 authorized by law for human remains; and

5 (2) may not be placed in a landfill.

6 (c) A health care facility responsible for disposing of
7 embryonic and fetal tissue remains may coordinate with an entity in
8 the registry established under Section 171.0161 in an effort to
9 offset the cost associated with the disposition of the embryonic
10 and fetal tissue remains of an unborn child.

11 (d) The executive commissioner shall adopt rules to
12 implement this section, including rules for the collection,
13 storage, handling, and movement of embryonic and fetal tissue
14 remains.

15 Sec. 697.006. SUSPENSION OR REVOCATION OF LICENSE. The
16 department may suspend or revoke the license of a health care
17 facility that violates Section 697.005 or a rule adopted under this
18 chapter.

19 Sec. 697.007. SUIT BY ATTORNEY GENERAL. (a) The attorney
20 general, at the request of the department, may file suit against a
21 health care facility that violates Section 697.005 or a rule
22 adopted under this chapter for:

23 (1) injunctive relief, including a temporary
24 restraining order, under Section 697.008;

25 (2) recovery of a civil penalty under Section 697.009;
26 or

27 (3) both injunctive relief and a civil penalty.

1 (b) A suit filed under this section must be filed in a
2 district court in Travis County or the county in which the health
3 care facility described by Subsection (a) is located.

4 Sec. 697.008. INJUNCTIVE RELIEF. The attorney general may
5 obtain injunctive relief in a suit filed under Section 697.007.
6 Injunctive relief provided by this section is in addition to any
7 other action, proceeding, or remedy authorized by law. It is not
8 necessary to allege or prove in a suit filed under Section 697.007
9 seeking injunctive relief that an adequate remedy at law does not
10 exist or that substantial or irreparable harm would result from the
11 continued violation.

12 Sec. 697.009. CIVIL PENALTY. (a) A health care facility
13 that violates Section 697.005 or a rule adopted under this chapter
14 is liable for a civil penalty in an amount of \$1,000 for each
15 violation. Each day of a continuing violation constitutes a
16 separate violation.

17 (b) The attorney general may file suit under Section 697.007
18 to collect the civil penalty. The attorney general may recover
19 reasonable expenses incurred in collecting the civil penalty,
20 including court costs, reasonable attorney's fees, investigation
21 costs, witness fees, and disposition expenses.

22 SECTION 9. Not later than December 1, 2017:

23 (1) the executive commissioner of the Health and Human
24 Services Commission shall adopt the rules required to implement
25 this Act, including rules for the collection, storage, handling,
26 and movement of embryonic and fetal tissue remains; and

27 (2) the Department of State Health Services shall

1 adopt the forms and procedures necessary to implement this Act.

2 SECTION 10. (a) Chapter 171, Health and Safety Code, as
3 amended by this Act, applies only to a procedure that results in
4 embryonic and fetal tissue remains being expelled or removed from a
5 pregnant woman on or after February 1, 2018. A procedure that
6 results in embryonic and fetal tissue remains being expelled or
7 removed from a pregnant woman before that date is governed by the
8 law in effect immediately before the effective date of this Act, and
9 that law is continued in effect for that purpose.

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

17 SECTION 11. This Act takes effect September 1, 2017.