

1-1 By: Huffines, Bettencourt S.B. No. 258  
 1-2 (In the Senate - Filed November 29, 2016; January 30, 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 6, Nays 2;  
 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. 258 By: Buckingham

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

1-21 relating to the disposition of embryonic and fetal tissue remains;  
 1-22 imposing a civil penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section [171.012\(a\)](#), Health and Safety Code, is  
 1-25 amended to read as follows:

1-26 (a) Consent to an abortion is voluntary and informed only  
 1-27 if:

1-28 (1) the physician who is to perform the abortion  
 1-29 informs the pregnant woman on whom the abortion is to be performed  
 1-30 of:

1-31 (A) the physician's name;

1-32 (B) the particular medical risks associated with  
 1-33 the particular abortion procedure to be employed, including, when  
 1-34 medically accurate:

1-35 (i) the risks of infection and hemorrhage;

1-36 (ii) the potential danger to a subsequent  
 1-37 pregnancy and of infertility; and

1-38 (iii) the possibility of increased risk of  
 1-39 breast cancer following an induced abortion and the natural  
 1-40 protective effect of a completed pregnancy in avoiding breast  
 1-41 cancer;

1-42 (C) the probable gestational age of the unborn  
 1-43 child at the time the abortion is to be performed; and

1-44 (D) the medical risks associated with carrying  
 1-45 the child to term;

1-46 (2) the physician who is to perform the abortion or the  
 1-47 physician's agent informs the pregnant woman that:

1-48 (A) medical assistance benefits may be available  
 1-49 for prenatal care, childbirth, and neonatal care;

1-50 (B) the father is liable for assistance in the  
 1-51 support of the child without regard to whether the father has  
 1-52 offered to pay for the abortion; and

1-53 (C) public and private agencies provide  
 1-54 pregnancy prevention counseling and medical referrals for  
 1-55 obtaining pregnancy prevention medications or devices, including  
 1-56 emergency contraception for victims of rape or incest;

1-57 (3) the physician who is to perform the abortion or the  
 1-58 physician's agent:

1-59 (A) provides the pregnant woman with the printed  
 1-60 materials described by Section [171.014](#); and

2-1 (B) informs the pregnant woman that those  
 2-2 materials:  
 2-3 (i) have been provided by the Department of  
 2-4 State Health Services;  
 2-5 (ii) are accessible on an Internet website  
 2-6 sponsored by the department;  
 2-7 (iii) describe the unborn child and list  
 2-8 agencies that offer alternatives to abortion; and  
 2-9 (iv) include a list of agencies that offer  
 2-10 sonogram services at no cost to the pregnant woman;  
 2-11 (4) the physician who is to perform the abortion or the  
 2-12 physician's agent:

2-13 (A) provides the pregnant woman with a  
 2-14 disposition of remains form described by Section 171.0161; and

2-15 (B) informs the pregnant woman that the form:

2-16 (i) is provided by the Department of State  
 2-17 Health Services;

2-18 (ii) is accessible on the department's  
 2-19 Internet website;

2-20 (iii) describes the options for the  
 2-21 disposition of the embryonic and fetal tissue remains; and

2-22 (iv) must be completed by the pregnant  
 2-23 woman and received by the physician before the abortion is  
 2-24 performed;

2-25 (5) before any sedative or anesthesia is administered  
 2-26 to the pregnant woman and at least 24 hours before the abortion or  
 2-27 at least two hours before the abortion if the pregnant woman waives  
 2-28 this requirement by certifying that she currently lives 100 miles  
 2-29 or more from the nearest abortion provider that is a facility  
 2-30 licensed under Chapter 245 or a facility that performs more than 50  
 2-31 abortions in any 12-month period:

2-32 (A) the physician who is to perform the abortion  
 2-33 or an agent of the physician who is also a sonographer certified by  
 2-34 a national registry of medical sonographers performs a sonogram on  
 2-35 the pregnant woman on whom the abortion is to be performed;

2-36 (B) the physician who is to perform the abortion  
 2-37 displays the sonogram images in a quality consistent with current  
 2-38 medical practice in a manner that the pregnant woman may view them;

2-39 (C) the physician who is to perform the abortion  
 2-40 provides, in a manner understandable to a layperson, a verbal  
 2-41 explanation of the results of the sonogram images, including a  
 2-42 medical description of the dimensions of the embryo or fetus, the  
 2-43 presence of cardiac activity, and the presence of external members  
 2-44 and internal organs; and

2-45 (D) the physician who is to perform the abortion  
 2-46 or an agent of the physician who is also a sonographer certified by  
 2-47 a national registry of medical sonographers makes audible the heart  
 2-48 auscultation for the pregnant woman to hear, if present, in a  
 2-49 quality consistent with current medical practice and provides, in a  
 2-50 manner understandable to a layperson, a simultaneous verbal  
 2-51 explanation of the heart auscultation;

2-52 (6) ~~(5)~~ before receiving a sonogram under  
 2-53 Subdivision (5)(A) ~~[(4)(A)]~~ and before the abortion is performed  
 2-54 and before any sedative or anesthesia is administered, the pregnant  
 2-55 woman completes and certifies with her signature an election form  
 2-56 that states as follows:

"ABORTION AND SONOGRAM ELECTION

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

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

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

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

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

3-1 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO  
3-2 HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I  
3-3 CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

3-4 I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT,  
3-5 INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT  
3-6 HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR  
3-7 THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY  
3-8 BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF  
3-9 RETALIATION RESULTING IN SERIOUS BODILY INJURY.

3-10 I AM A MINOR AND OBTAINING AN ABORTION IN  
3-11 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER  
3-12 CHAPTER 33, TEXAS FAMILY CODE.

3-13 MY FETUS HAS AN IRREVERSIBLE MEDICAL  
3-14 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE  
3-15 DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL  
3-16 FILE.

3-17 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL  
3-18 AND WITHOUT COERCION.

3-19 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM  
3-20 THE NEAREST ABORTION PROVIDER THAT IS A FACILITY  
3-21 LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY  
3-22 CODE, OR A FACILITY THAT PERFORMS MORE THAN 50  
3-23 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

3-24 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100  
3-25 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT  
3-26 IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH  
3-27 AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN  
3-28 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE  
3-29 REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS  
3-30 PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY  
3-31 PLACE OF RESIDENCE IS:\_\_\_\_\_.

3-32 \_\_\_\_\_  
3-33 SIGNATURE DATE";

3-34 (7) [~~(6)~~] before the abortion is performed, the  
3-35 physician who is to perform the abortion receives:

3-36 (A) a copy of the completed disposition of  
3-37 remains form required by Subdivision (4); and

3-38 (B) a copy of the signed, written certification  
3-39 required by Subdivision (6) [~~(5)~~]; and

3-40 (8) [~~(7)~~] the pregnant woman is provided the name of  
3-41 each person who provides or explains the information required under  
3-42 this subsection.

3-43 SECTION 2. Section 171.0121, Health and Safety Code, is  
3-44 amended to read as follows:

3-45 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion  
3-46 begins, a copy of both the completed disposition of remains form  
3-47 required under Section 171.012(a)(4) and the signed, written  
3-48 certification received by the physician under Section  
3-49 171.012(a)(7) [~~171.012(a)(6)~~] must be placed in the pregnant  
3-50 woman's medical records.

3-51 (b) A copy of the signed, written certification required  
3-52 under Sections 171.012(a)(6) [~~171.012(a)(5)~~] and (7) [~~(6)~~] shall be  
3-53 retained by the facility where the abortion is performed until:

3-54 (1) the seventh anniversary of the date it is signed;  
3-55 or

3-56 (2) if the pregnant woman is a minor, the later of:  
3-57 (A) the seventh anniversary of the date it is  
3-58 signed; or

3-59 (B) the woman's 21st birthday.

3-60 SECTION 3. Sections 171.0122(b), (c), and (d), Health and  
3-61 Safety Code, are amended to read as follows:

3-62 (b) A pregnant woman may choose not to view the sonogram  
3-63 images required to be provided to and reviewed with the pregnant  
3-64 woman under Section 171.012(a)(5) [~~171.012(a)(4)~~].

3-65 (c) A pregnant woman may choose not to hear the heart  
3-66 auscultation required to be provided to and reviewed with the  
3-67 pregnant woman under Section 171.012(a)(5) [~~171.012(a)(4)~~].

3-68 (d) A pregnant woman may choose not to receive the verbal  
3-69 explanation of the results of the sonogram images under Section

4-1 171.012(a)(5)(C) [~~171.012(a)(4)(C)~~] if:

4-2 (1) the woman's pregnancy is a result of a sexual

4-3 assault, incest, or other violation of the Penal Code that has been

4-4 reported to law enforcement authorities or that has not been

4-5 reported because she has a reason that she declines to reveal

4-6 because she reasonably believes that to do so would put her at risk

4-7 of retaliation resulting in serious bodily injury;

4-8 (2) the woman is a minor and obtaining an abortion in

4-9 accordance with judicial bypass procedures under Chapter 33, Family

4-10 Code; or

4-11 (3) the fetus has an irreversible medical condition or

4-12 abnormality, as previously identified by reliable diagnostic

4-13 procedures and documented in the woman's medical file.

4-14 SECTION 4. The heading to Section 171.013, Health and

4-15 Safety Code, is amended to read as follows:

4-16 Sec. 171.013. DISTRIBUTION OF STATE MATERIALS AND FORM.

4-17 SECTION 5. Section 171.013(a), Health and Safety Code, is

4-18 amended to read as follows:

4-19 (a) The physician or the physician's agent shall furnish

4-20 copies of the materials described by Section 171.014 and the form

4-21 described by Section 171.0161 to the pregnant woman at least 24

4-22 hours before the abortion is to be performed and shall direct the

4-23 pregnant woman to the Internet website required to be published

4-24 under Section 171.014(e). The physician or the physician's agent

4-25 may furnish the materials and form to the pregnant woman by mail if

4-26 the materials and form are mailed, restricted delivery to

4-27 addressee, at least 72 hours before the abortion is to be performed.

4-28 SECTION 6. Subchapter B, Chapter 171, Health and Safety

4-29 Code, is amended by adding Section 171.0161 to read as follows:

4-30 Sec. 171.0161. DISPOSITION OF EMBRYONIC AND FETAL TISSUE

4-31 REMAINS: FORM; NONPROFIT ORGANIZATION ASSISTANCE REGISTRY; RULES.

4-32 (a) A pregnant woman may decide to inter or cremate the embryonic

4-33 and fetal tissue remains of an unborn child who is aborted.

4-34 (b) The department shall develop and maintain a form for a

4-35 pregnant woman to select the method of disposition of the embryonic

4-36 and fetal tissue remains.

4-37 (c) The form must include:

4-38 (1) burial and cremation as methods of disposition of

4-39 the embryonic and fetal tissue remains of an unborn child;

4-40 (2) a statement that the pregnant woman may elect to

4-41 have the abortion provider dispose of the embryonic and fetal

4-42 tissue remains in accordance with Section 697.005; and

4-43 (3) a statement that the pregnant woman may privately

4-44 dispose of the embryonic and fetal tissue remains of an unborn child

4-45 in a manner that complies with Section 697.005 but may be held

4-46 financially responsible for the abortion provider's reasonable

4-47 costs of preparing the remains for transport.

4-48 (d) The form must be:

4-49 (1) in English and Spanish;

4-50 (2) easily comprehensible; and

4-51 (3) in a large, clearly legible typeface.

4-52 (e) The department shall post the form on the department's

4-53 Internet website.

4-54 (f) The department shall:

4-55 (1) establish and maintain a registry of:

4-56 (A) participating funeral homes and cemeteries

4-57 willing to provide free common burial or low-cost private burial;

4-58 and

4-59 (B) private nonprofit organizations that

4-60 register with the department to provide financial assistance for

4-61 the costs associated with burial or cremation of the embryonic and

4-62 fetal tissue remains of an unborn child; and

4-63 (2) make the registry information available on request

4-64 to a physician, physician's agent, or pregnant woman electing to

4-65 privately dispose of the embryonic and fetal tissue remains.

4-66 (g) The executive commissioner shall adopt rules to

4-67 implement this section.

4-68 SECTION 7. Subtitle B, Title 8, Health and Safety Code, is

4-69 amended by adding Chapter 697 to read as follows:

5-1 CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

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

5-6 Sec. 697.002. DEFINITIONS. In this chapter:

5-7 (1) "Cremation" means the irreversible process of  
 5-8 reducing remains to ashes or bone fragments through extreme heat  
 5-9 and evaporation.

5-10 (2) "Department" means the Department of State Health  
 5-11 Services.

5-12 (3) "Embryonic and fetal tissue remains" means an  
 5-13 embryo, a fetus, body parts, or organs from a pregnancy for which  
 5-14 the issuance of a fetal death certificate is not required by law.  
 5-15 The term does not include the umbilical cord, placenta, gestational  
 5-16 sac, blood, or body fluids.

5-17 (4) "Executive commissioner" means the executive  
 5-18 commissioner of the Health and Human Services Commission.

5-19 (5) "Incineration" means the process of burning  
 5-20 remains in an incinerator.

5-21 (6) "Interment" means the disposition of remains by  
 5-22 entombment, burial, or placement in a niche.

5-23 (7) "Steam disinfection" means the act of subjecting  
 5-24 remains to steam under pressure to disinfect the remains.

5-25 Sec. 697.003. APPLICABILITY OF CHAPTER. This chapter does  
 5-26 not apply to embryonic and fetal tissue remains:

5-27 (1) expelled or removed from a pregnant woman who is  
 5-28 not at the time of expulsion or removal in the care of a health care  
 5-29 facility;

5-30 (2) sent to a clinical, diagnostic, pathological, or  
 5-31 biomedical research laboratory for medical testing;

5-32 (3) sent to a forensic laboratory for testing related  
 5-33 to a criminal investigation; or

5-34 (4) donated for research, provided the donation  
 5-35 complies with the laws of this state.

5-36 Sec. 697.004. APPLICABILITY OF OTHER LAW. Embryonic and  
 5-37 fetal tissue remains are not pathological waste. Except as  
 5-38 otherwise provided by this chapter, Chapters 711 and 716 of this  
 5-39 code and Chapter 651, Occupations Code, do not apply to the  
 5-40 disposition of embryonic and fetal tissue remains.

5-41 Sec. 697.005. DISPOSITION OF EMBRYONIC AND FETAL TISSUE  
 5-42 REMAINS. (a) A health care facility in this state that provides  
 5-43 health or medical care to a pregnant woman shall dispose of  
 5-44 embryonic and fetal tissue remains related to that care by:

5-45 (1) interment;

5-46 (2) cremation or incineration; or

5-47 (3) steam disinfection followed by interment.

5-48 (b) The ashes resulting from the cremation or incineration  
 5-49 of embryonic and fetal tissue remains:

5-50 (1) may be interred or scattered in any manner as  
 5-51 authorized by law for human remains; and

5-52 (2) may not be placed in a landfill.

5-53 (c) A health care facility responsible for disposing of  
 5-54 embryonic and fetal tissue remains may coordinate with an entity in  
 5-55 the registry established under Section 171.0161 in an effort to  
 5-56 offset the cost associated with burial or cremation of the  
 5-57 embryonic and fetal tissue remains of an unborn child.

5-58 (d) The executive commissioner shall adopt rules to  
 5-59 implement this section, including rules for the collection,  
 5-60 storage, handling, and transportation of embryonic and fetal tissue  
 5-61 remains.

5-62 Sec. 697.006. SUSPENSION OR REVOCATION OF LICENSE. The  
 5-63 department may suspend or revoke the license of a health care  
 5-64 facility that violates Section 697.005 or a rule adopted under this  
 5-65 chapter.

5-66 Sec. 697.007. SUIT BY ATTORNEY GENERAL. (a) The attorney  
 5-67 general, at the request of the department, may file suit against a  
 5-68 health care facility that violates Section 697.005 or a rule  
 5-69 adopted under this chapter for:

6-1 (1) injunctive relief, including a temporary  
6-2 restraining order, under Section 697.008;

6-3 (2) recovery of a civil penalty under Section 697.009;  
6-4 or

6-5 (3) both injunctive relief and a civil penalty.

6-6 (b) A suit filed under this section must be filed in a  
6-7 district court in Travis County or the county in which the health  
6-8 care facility described by Subsection (a) is located.

6-9 Sec. 697.008. INJUNCTIVE RELIEF. The attorney general may  
6-10 obtain injunctive relief in a suit filed under Section 697.007.  
6-11 Injunctive relief provided by this section is in addition to any  
6-12 other action, proceeding, or remedy authorized by law. It is not  
6-13 necessary to allege or prove in a suit filed under Section 697.007  
6-14 seeking injunctive relief that an adequate remedy at law does not  
6-15 exist or that substantial or irreparable harm would result from the  
6-16 continued violation.

6-17 Sec. 697.009. CIVIL PENALTY. (a) A health care facility  
6-18 that violates Section 697.005 or a rule adopted under this chapter  
6-19 is liable for a civil penalty in an amount of \$1,000 for each  
6-20 violation. Each day of a continuing violation constitutes a  
6-21 separate violation.

6-22 (b) The attorney general may file suit under Section 697.007  
6-23 to collect the civil penalty. The attorney general may recover  
6-24 reasonable expenses incurred in collecting the civil penalty,  
6-25 including court costs, reasonable attorney's fees, investigation  
6-26 costs, witness fees, and disposition expenses.

6-27 SECTION 8. Not later than December 1, 2017:

6-28 (1) the executive commissioner of the Health and Human  
6-29 Services Commission shall adopt the rules required to implement  
6-30 this Act; and

6-31 (2) the Department of State Health Services shall  
6-32 adopt the forms and procedures necessary to implement this Act.

6-33 SECTION 9. (a) Chapter 171, Health and Safety Code, as  
6-34 amended by this Act, applies only to an abortion performed on or  
6-35 after February 1, 2018. An abortion performed before that date is  
6-36 governed by the law in effect immediately before the effective date  
6-37 of this Act, and that law is continued in effect for that purpose.

6-38 (b) Chapter 697, Health and Safety Code, as added by this  
6-39 Act, applies only to the disposition of embryonic and fetal tissue  
6-40 remains that occurs on or after February 1, 2018. The disposition  
6-41 of embryonic and fetal tissue remains that occurs before February  
6-42 1, 2018, is governed by the law in effect immediately before the  
6-43 effective date of this Act, and the former law is continued in  
6-44 effect for that purpose.

6-45 SECTION 10. This Act takes effect September 1, 2017.

6-46 \* \* \* \* \*