

By: Perry

S.B. No. 415

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition on the performance of dismemberment abortions; providing penalties; creating a criminal offense.

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. DISMEMBERMENT ABORTIONS

Sec. 171.101. DEFINITION. In this subchapter, "dismemberment abortion" means an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child's body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child's death.

Sec. 171.102. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A person may not intentionally perform a dismemberment abortion

1 unless the dismemberment abortion is necessary in a medical  
2 emergency.

3 (b) A woman on whom a dismemberment abortion is performed,  
4 an employee or agent acting under the direction of a physician who  
5 performs a dismemberment abortion, or a person who fills a  
6 prescription or provides equipment used in a dismemberment abortion  
7 does not violate Subsection (a).

8 Sec. 171.103. CRIMINAL PENALTY. (a) A person who violates  
9 Section 171.102 commits an offense.

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

11 Sec. 171.104. CONSTRUCTION OF SUBCHAPTER. (a) This  
12 subchapter shall be construed, as a matter of state law, to be  
13 enforceable to the maximum possible extent consistent with but not  
14 further than federal constitutional requirements, even if that  
15 construction is not readily apparent, as such constructions are  
16 authorized only to the extent necessary to save the subchapter from  
17 judicial invalidation. Judicial reformation of statutory language  
18 is explicitly authorized only to the extent necessary to save the  
19 statutory provision from invalidity.

20 (b) If any court determines that a provision of this  
21 subchapter is unconstitutionally vague, the court shall interpret  
22 the provision, as a matter of state law, to avoid the vagueness  
23 problem and shall enforce the provision to the maximum possible  
24 extent. If a federal court finds any provision of this subchapter  
25 or its application to any person, group of persons, or  
26 circumstances to be unconstitutionally vague and declines to impose  
27 the saving construction described by this subsection, the Supreme

1 Court of Texas shall provide an authoritative construction of the  
2 objectionable statutory provisions that avoids the constitutional  
3 problems while enforcing the statute's restrictions to the maximum  
4 possible extent and shall agree to answer any question certified  
5 from a federal appellate court regarding the statute.

6 (c) A state executive or administrative official may not  
7 decline to enforce this subchapter, or adopt a construction of this  
8 subchapter in a way that narrows its applicability, based on the  
9 official's own beliefs concerning the requirements of the state or  
10 federal constitution, unless the official is enjoined by a state or  
11 federal court from enforcing this subchapter.

12 (d) This subchapter may not be construed to:

13 (1) authorize the prosecution of or a cause of action  
14 to be brought against a woman on whom an abortion is performed or  
15 induced in violation of this subchapter; or

16 (2) create or recognize a right to abortion or a right  
17 to a particular method of abortion.

18 SECTION 2. Section 164.052(a), Occupations Code, is amended  
19 to read as follows:

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

22 (1) submits to the board a false or misleading  
23 statement, document, or certificate in an application for a  
24 license;

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

27 (3) commits fraud or deception in taking or passing an

1 examination;

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

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

7 (6) uses an advertising statement that is false,  
8 misleading, or deceptive;

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

12 (8) purchases, sells, barter, or uses, or offers to  
13 purchase, sell, barter, or use, a medical degree, license,  
14 certificate, or diploma, or a transcript of a license, certificate,  
15 or diploma in or incident to an application to the board for a  
16 license to practice medicine;

17 (9) alters, with fraudulent intent, a medical license,  
18 certificate, or diploma, or a transcript of a medical license,  
19 certificate, or diploma;

20 (10) uses a medical license, certificate, or diploma,  
21 or a transcript of a medical license, certificate, or diploma that  
22 has been:

23 (A) fraudulently purchased or issued;

24 (B) counterfeited; or

25 (C) materially altered;

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

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

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

7           (14) directly or indirectly employs a person whose  
8 license to practice medicine has been suspended, canceled, or  
9 revoked;

10          (15) associates in the practice of medicine with a  
11 person:

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

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

16          (16) performs or procures a criminal abortion, aids or  
17 abets in the procuring of a criminal abortion, attempts to perform  
18 or procure a criminal abortion, or attempts to aid or abet the  
19 performance or procurement of a criminal abortion;

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

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

26                   (A) the abortion is necessary to prevent the  
27 death of the woman;

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

3 (C) the woman is diagnosed with a significant  
4 likelihood of suffering imminent severe, irreversible brain damage  
5 or imminent severe, irreversible paralysis;

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

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

14 (21) performs or induces or attempts to perform or  
15 induce an abortion in violation of Subchapter C, Chapter 171,  
16 Health and Safety Code; or

17 (22) performs a dismemberment abortion in violation of  
18 Subchapter F, Chapter 171, Health and Safety Code.

19 SECTION 3. Section 164.055(b), Occupations Code, is amended  
20 to read as follows:

21 (b) The sanctions provided by Subsection (a) are in addition  
22 to any other grounds for refusal to admit persons to examination  
23 under this subtitle or to issue a license or renew a license to  
24 practice medicine under this subtitle. The criminal penalties  
25 provided by Section 165.152 do not apply to a violation of Section  
26 170.002, Health and Safety Code, or Subchapter C or F, Chapter 171,  
27 Health and Safety Code.

1           SECTION 4. (a) If some or all of the provisions of this Act  
2 are ever temporarily or permanently restrained or enjoined by  
3 judicial order, all other provisions of Texas law regulating or  
4 restricting abortion shall be enforced as though the restrained or  
5 enjoined provisions had not been adopted; provided, however, that  
6 whenever the temporary or permanent restraining order or injunction  
7 is stayed or dissolved, or otherwise ceases to have effect, the  
8 provisions shall have full force and effect.

9           (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in  
10 which in the context of determining the severability of a state  
11 statute regulating abortion the United States Supreme Court held  
12 that an explicit statement of legislative intent is controlling, it  
13 is the intent of the legislature that every provision, section,  
14 subsection, sentence, clause, phrase, or word in this Act, and  
15 every application of the provisions in this Act, are severable from  
16 each other. If any application of any provision in this Act to any  
17 person, group of persons, or circumstances is found by a court to be  
18 invalid, the remaining applications of that provision to all other  
19 persons and circumstances shall be severed and may not be affected.  
20 All constitutionally valid applications of this Act shall be  
21 severed from any applications that a court finds to be invalid,  
22 leaving the valid applications in force, because it is the  
23 legislature's intent and priority that the valid applications be  
24 allowed to stand alone. Even if a reviewing court finds a provision  
25 of this Act to impose an undue burden in a large or substantial  
26 fraction of relevant cases, the applications that do not present an  
27 undue burden shall be severed from the remaining provisions and

1 shall remain in force, and shall be treated as if the legislature  
2 had enacted a statute limited to the persons, group of persons, or  
3 circumstances for which the statute's application does not present  
4 an undue burden. The legislature further declares that it would  
5 have passed this Act, and each provision, section, subsection,  
6 sentence, clause, phrase, or word, and all constitutional  
7 applications of this Act, irrespective of the fact that any  
8 provision, section, subsection, sentence, clause, phrase, or word,  
9 or applications of this Act, were to be declared unconstitutional  
10 or to represent an undue burden.

11 (c) If any provision of this Act is found by any court to be  
12 unconstitutionally vague, then the applications of that provision  
13 that do not present constitutional vagueness problems shall be  
14 severed and remain in force.

15 SECTION 5. The change in law made by this Act applies only  
16 to an abortion performed on or after the effective date of this Act.  
17 An abortion performed before the effective date of this Act is  
18 governed by the law in effect on the date the abortion was  
19 performed, and the former law is continued in effect for that  
20 purpose.

21 SECTION 6. This Act takes effect immediately if it receives  
22 a vote of two-thirds of all the members elected to each house, as  
23 provided by Section 39, Article III, Texas Constitution. If this  
24 Act does not receive the vote necessary for immediate effect, this  
25 Act takes effect September 1, 2017.