

By: Rodríguez

S.B. No. 1632

A BILL TO BE ENTITLED

AN ACT

relating to the Whole Woman's Health Act.

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

SECTION 1. (a) This Act shall be known as the Whole Woman's Health Act.

(b) The legislature finds that:

(1) comprehensive reproductive health care, including safe abortion, is a vital component of a woman's overall health and of her social and economic equality;

(2) abortion is one of the safest medical procedures in the United States, as demonstrated by available data, including from the federal Centers for Disease Control and Prevention, showing abortion has a more than 99 percent safety record;

(3) any regulation of medical care must have a legitimate purpose and advance the goals of improving the quality of care and increasing access to care;

(4) the United States Supreme Court held more than 40 years ago in *Roe v. Wade* that access to an abortion is a constitutional right and that states may not prohibit abortion before viability;

(5) the right to an abortion has been upheld multiple times by the United States Supreme Court, including in the 1992 case *Planned Parenthood v. Casey* and most recently in the landmark decision *Whole Woman's Health v. Hellerstedt*;

1           (6) in *Whole Woman's Health*, the court held that the  
2 United States Constitution "requires that courts consider the  
3 burdens a law imposes on abortion access together with the benefits  
4 those laws confer";

5           (7) in *Whole Woman's Health*, the court further held  
6 that courts, "when determining the constitutionality of laws  
7 regulating abortion procedures," must place "considerable weight  
8 upon evidence . . . presented";

9           (8) applying the standard described in Subdivision (7)  
10 of this section in *Whole Woman's Health*, the court struck down two  
11 provisions of Chapter 1 (H.B. 2), Acts of the 83rd Legislature, 2nd  
12 Called Session, 2013, that were designed to close abortion clinics  
13 in the state and that the court concluded provided few, if any,  
14 health benefits for women;

15           (9) Justice Ruth Bader Ginsburg concluded in *Whole*  
16 *Woman's Health* given the safety of abortion, "it is beyond rational  
17 belief that H.B. 2 could genuinely protect the health of women, and  
18 certain that the law 'would simply make it more difficult for them  
19 to obtain abortions'";

20           (10) Justice Ruth Bader Ginsburg also observed  
21 abortion restrictions that "'do little or nothing for health, but  
22 rather strew impediments to abortion' . . . cannot survive judicial  
23 inspection";

24           (11) according to the American College of  
25 Obstetricians and Gynecologists, American Medical Association,  
26 American Academy of Family Physicians, and American Osteopathic  
27 Association, which are leading public health organizations and

1 *amici curiae* for the petitioners in *Whole Woman's Health*,  
2 "[w]omen's access to high-quality, evidence-based abortion should  
3 not be limited by laws enacted under the guise of patient safety but  
4 that, in fact, harm women's health"; and

5 (12) the 334 restrictions on abortion providers and  
6 their patients adopted nationally since 2011 and the 13 onerous  
7 restrictions enacted in this state based on pretextual reasons are  
8 just a systematic attempt to eliminate access to safe and legal  
9 medical care.

10 (c) In accordance with the United States Constitution, it is  
11 the intent of the legislature to prevent the enforcement of laws or  
12 regulations that burden abortion access and do not provide  
13 legitimate health benefits.

14 SECTION 2. The heading to Chapter 170, Health and Safety  
15 Code, is amended to read as follows:

16 CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION AND RIGHT TO  
17 ABORTION

18 SECTION 3. Chapter 170, Health and Safety Code, is amended  
19 by adding Sections 170.003 and 170.004 to read as follows:

20 Sec. 170.003. RIGHT TO ABORTION. Every woman in this state  
21 has the fundamental right to choose to obtain a safe and legal  
22 abortion. This state or a political subdivision of this state may  
23 not prohibit a woman from obtaining an abortion at any time  
24 throughout her pregnancy if the termination is necessary, in the  
25 professional judgment of a physician, to protect the woman's life  
26 or health.

27 Sec. 170.004. PROHIBITED ABORTION LAWS; CIVIL ACTION;

1 WAIVER OF IMMUNITY. (a) Notwithstanding any other law, this state  
2 or a political subdivision of this state may not enforce a law on  
3 abortion that places a burden on a woman's access to abortion and  
4 does not confer any legitimate health benefit to the woman.

5 (b) For purposes of Subsection (a), a law places a burden on  
6 access to abortion if the law:

7 (1) forces abortion providers to close;

8 (2) increases the time a woman is required to wait to  
9 have an abortion;

10 (3) requires a meaningful increase in the distance a  
11 woman is required to travel to access care;

12 (4) requires medically unnecessary visits to a health  
13 care facility;

14 (5) requires a health care provider to perform a  
15 medical or health care service the provider would not otherwise  
16 perform;

17 (6) increases the risk to a woman's health;

18 (7) causes a meaningful increase in the cost of an  
19 abortion procedure;

20 (8) is enacted solely for the purpose of stigmatizing  
21 abortion patients and abortion providers; or

22 (9) has as its sole purpose or effect decreasing or  
23 eliminating access to abortion.

24 (c) For purposes of Subsection (a), a law confers a  
25 legitimate health benefit if the law:

26 (1) expands a woman's access to medical or health care  
27 services; or

1           (2) increases an abortion patient's safety according  
2 to evidence-based research.

3           (d) A person who is aggrieved by this state's or a political  
4 subdivision's violation of Subsection (a) may bring a civil action  
5 against this state or the political subdivision for injunctive  
6 relief and damages incurred as a result of the violation. Sovereign  
7 immunity of this state and governmental immunity of the political  
8 subdivision from suit and to liability are waived and abolished to  
9 the extent of liability created under this subsection.

10           SECTION 4. Section 171.003, Health and Safety Code, is  
11 amended to read as follows:

12           Sec. 171.003. PERSONS WHO MAY [~~PHYSICIAN TO~~] PERFORM  
13 ABORTION. An abortion may be performed only by:

14           (1) a physician licensed to practice medicine in this  
15 state;

16           (2) a nurse licensed under Subtitle E, Title 3,  
17 Occupations Code, that is operating within the nurse's scope of  
18 practice; or

19           (3) a physician assistant licensed under Chapter 204,  
20 Occupations Code, that is operating within the physician  
21 assistant's scope of practice.

22           SECTION 5. The heading to Section 245.010, Health and  
23 Safety Code, is amended to read as follows:

24           Sec. 245.010. PERSONS WHO MAY PERFORM ABORTION [~~MINIMUM~~  
25 ~~STANDARDS~~].

26           SECTION 6. Section 245.010(b), Health and Safety Code, is  
27 amended to read as follows:

1 (b) Only a physician as defined by Subtitle B, Title 3,  
2 Occupations Code, a nurse licensed under Subtitle E, Title 3,  
3 Occupations Code, that is operating within the nurse's scope of  
4 practice, or a physician assistant licensed under Chapter 204,  
5 Occupations Code, that is operating within the physician  
6 assistant's scope of practice may perform an abortion.

7 SECTION 7. Section 164.052(a), Occupations Code, is amended  
8 to read as follows:

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

11 (1) submits to the board a false or misleading  
12 statement, document, or certificate in an application for a  
13 license;

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

16 (3) commits fraud or deception in taking or passing an  
17 examination;

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

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

23 (6) uses an advertising statement that is false,  
24 misleading, or deceptive;

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

1           (8) purchases, sells, barter, or uses, or offers to  
2 purchase, sell, barter, or use, a medical degree, license,  
3 certificate, or diploma, or a transcript of a license, certificate,  
4 or diploma in or incident to an application to the board for a  
5 license to practice medicine;

6           (9) alters, with fraudulent intent, a medical license,  
7 certificate, or diploma, or a transcript of a medical license,  
8 certificate, or diploma;

9           (10) uses a medical license, certificate, or diploma,  
10 or a transcript of a medical license, certificate, or diploma that  
11 has been:

12                   (A) fraudulently purchased or issued;

13                   (B) counterfeited; or

14                   (C) materially altered;

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

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

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

23           (14) directly or indirectly employs a person whose  
24 license to practice medicine has been suspended, canceled, or  
25 revoked;

26           (15) associates in the practice of medicine with a  
27 person:

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

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

5 (16) performs or procures a criminal abortion, aids or  
6 abets in the procuring of a criminal abortion, attempts to perform  
7 or procure a criminal abortion, or attempts to aid or abet the  
8 performance or procurement of a criminal abortion;

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

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

15 (A) the abortion is necessary to protect the  
16 health or prevent the death of the woman;

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

19 (C) the woman is diagnosed with a significant  
20 likelihood of suffering imminent severe, irreversible brain damage  
21 or imminent severe, irreversible paralysis;

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



1           (20) otherwise performs an abortion on an  
2 unemancipated minor in violation of Chapter 33, Family Code[ ~~or~~  
3           ~~[(21) performs or induces or attempts to perform or~~  
4 ~~induce an abortion in violation of Subchapter C, Chapter 171,~~  
5 ~~Health and Safety Code].~~

6           SECTION 8. Section 164.055(b), Occupations Code, is amended  
7 to read as follows:

8           (b) The sanctions provided by Subsection (a) are in addition  
9 to any other grounds for refusal to admit persons to examination  
10 under this subtitle or to issue a license or renew a license to  
11 practice medicine under this subtitle. The criminal penalties  
12 provided by Section 165.152 do not apply to a violation of Section  
13 170.002 [~~or Subchapter C, Chapter 171~~], Health and Safety Code.

14           SECTION 9. The following provisions are repealed:

15           (1) Section 32.005, Health and Safety Code;

16           (2) Sections 171.0031, 171.004, 171.012, 171.0121,  
17 171.0122, 171.0123, 171.013, 171.014, 171.015, 171.016, 171.017,  
18 and 171.018, Health and Safety Code;

19           (3) Subchapters C and D, Chapter 171, Health and  
20 Safety Code;

21           (4) Sections 241.007, 243.017, 245.010(a), and  
22 245.024, Health and Safety Code; and

23           (5) Section 164.0551, Occupations Code.

24           SECTION 10. The changes in law made by this Act apply only  
25 to an abortion performed on or after the effective date of this Act.  
26 An abortion performed before the effective date of this Act is  
27 governed by the law applicable to the abortion immediately before

1 the effective date of this Act, and that law is continued in effect  
2 for that purpose.

3 SECTION 11. This Act takes effect immediately if it  
4 receives a vote of two-thirds of all the members elected to each  
5 house, as provided by Section 39, Article III, Texas Constitution.  
6 If this Act does not receive the vote necessary for immediate  
7 effect, this Act takes effect September 1, 2017.