87R5512 SCL-D

By:  Slawson H.B. No. 1165

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting abortions after detection of an unborn child's heartbeat; authorizing an administrative penalty.

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

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

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201.  DEFINITIONS. In this subchapter:

(1)  "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

(2)  "Gestational age" means the time elapsed from the first day of a woman's last menstrual period.

(3)  "Gestational sac" means the structure comprising the extraembryonic membranes enveloping the unborn child that is typically visible by ultrasound after the fourth week of pregnancy.

(4)  "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

(5)  "Pregnancy" means the human female reproductive condition that:

(A)  begins with fertilization;

(B)  occurs when the woman is carrying the developing human offspring; and

(C)  is calculated from the first day of the woman's last menstrual period.

(6)  "Standard medical practice" means the degree of skill, care, and diligence that a physician of the same medical specialty would employ in similar circumstances.

(7)  "Unborn child" means an offspring of human beings from fertilization until birth.

Sec. 171.202.  DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) Except as provided by Section 171.204, a physician may not intentionally perform or induce an abortion on a pregnant woman unless the physician first determines, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(b)  In making a determination under Subsection (a), the physician must use a test that is:

(1)  consistent with the physician's good faith understanding of standard medical practice;

(2)  consistent with rules adopted under this subchapter; and

(3)  appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(c)  A physician making a determination under Subsection (a) shall record in the pregnant woman's medical record the estimated gestational age of the unborn child, the test used for detecting a fetal heartbeat, the date and time of the test, and the results of the test.

(d)  The executive commissioner may adopt rules specifying the appropriate tests to be used in determining the presence of a fetal heartbeat based on standard medical practice.

Sec. 171.203.  ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT PROHIBITED. (a) Except as provided by Section 171.204, a physician may not intentionally perform or induce an abortion on a pregnant woman with the specific intent of causing or abetting the termination of the life of the woman's unborn child if the physician detected a fetal heartbeat for the unborn child under Section 171.202 or failed to perform a test to detect a fetal heartbeat.

(b)  A physician does not violate this section if the physician performed a test for a fetal heartbeat under Section 171.202 and did not detect a fetal heartbeat.

(c)  This section does not affect the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy.

Sec. 171.204.  EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) This subchapter does not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b)  A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1)  the physician's belief that a medical emergency necessitated the abortion; and

(2)  the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c)  A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b) until the seventh anniversary of the date that the abortion is performed or induced.

Sec. 171.205.  ADMINISTRATIVE PENALTY. The Texas Medical Board may take disciplinary action under Chapter 164, Occupations Code, or assess an administrative penalty under Subchapter A, Chapter 165, Occupations Code, against a person who violates this subchapter.

SECTION 2.  Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008.  REQUIRED DOCUMENTATION. (a) If an abortion is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b)  A physician shall:

(1)  place the document described by Subsection (a) in the pregnant woman's medical record; and

(2)  maintain a copy of the document described by Subsection (a) in the physician's practice records until the seventh anniversary of the date that the document is executed.

SECTION 3.  Section 245.011(c), Health and Safety Code, is amended to read as follows:

(c)  The report must include:

(1)  whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2)  the patient's year of birth, race, marital status, and state and county of residence;

(3)  the type of abortion procedure;

(4)  the date the abortion was performed;

(5)  whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6)  the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7)  the date, if known, of the patient's last menstrual cycle;

(8)  the number of previous live births of the patient; [~~and~~]

(9)  the number of previous induced abortions of the patient;

(10)  whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion;

(11)  whether the physician made a determination of the presence of a fetal heartbeat in accordance with Section 171.202; and

(12)  whether the physician performed or induced the abortion under circumstances described by Section 171.204.

SECTION 4.  The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 5.  This Act takes effect September 1, 2021.