87R19390 SCL-D

By:  Oliverson, Klick, Price, Schaefer, H.B. No. 3760

     et al.

Substitute the following for H.B. No. 3760:

By:  Klick C.S.H.B. No. 3760

A BILL TO BE ENTITLED

AN ACT

relating to information regarding perinatal palliative care, regulation of abortion, and the availability of certain defenses to prosecution for homicide and assault offenses; creating a criminal offense.

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

ARTICLE 1. LEGISLATIVE FINDINGS

SECTION 1.01.  The legislature finds that:

(1)  Texas has a compelling state interest in protecting all Texans from discrimination based on sex, race, and disability;

(2)  Texas enforces prohibitions against discrimination based on sex, race, and disability in various areas, including housing, employment, education, insurance, and health program and service provision; and

(3)  Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

ARTICLE 2. DISCRIMINATORY ABORTIONS PROHIBITED

SECTION 2.01.  Chapter 161, Health and Safety Code, is amended by adding Subchapter X to read as follows:

SUBCHAPTER X. PERINATAL PALLIATIVE CARE

Sec. 161.701.  PURPOSE OF SUBCHAPTER. The purpose of this subchapter is to ensure that a pregnant woman who receives a diagnosis of a life-threatening disability of the woman's preborn child is informed of the availability of perinatal palliative care.

Sec. 161.702.  DEFINITION. In this subchapter, "perinatal palliative care" means the provision of comprehensive, supportive care to reduce the suffering of a pregnant woman, her preborn child, and her family, from diagnosis of the preborn child's life-threatening disability through the delivery and possible death of the child as a result of the life-threatening disability. The term includes medical, social, and mental health care, including counseling and health care provided by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, specialty nurses, clergy, social workers, and other individuals focused on alleviating fear and pain and ensuring the pregnant woman, her preborn child, and her family experience a supportive environment.

Sec. 161.703.  PERINATAL PALLIATIVE CARE INFORMATIONAL MATERIALS. (a) The commission shall develop perinatal palliative care informational materials and post the materials on the commission's Internet website. The materials must include:

(1)  a description of the health care and other services available through perinatal palliative care; and

(2)  information about medical assistance benefits that may be available for prenatal care, childbirth, and perinatal palliative care.

(b)  The commission shall develop, regularly update, and publish a geographically indexed list of all perinatal palliative care providers and programs in this state. The commission may include perinatal palliative care providers and programs in other states that provide care to residents of this state but may not include an abortion provider, as defined by Section 171.002, or an affiliate, as defined by Section 2272.001, Government Code, as added by Chapter 501 (S.B. 22), Acts of the 86th Legislature, Regular Session, 2019, of an abortion provider. The commission shall post the list of perinatal palliative care providers and programs, including contact information, on the commission's Internet website and note the providers and programs that provide services free of charge.

Sec. 161.704.  PERINATAL PALLIATIVE CARE CERTIFICATION FORM. The commission shall develop a form on which a pregnant woman certifies that she has received the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.703.

Sec. 161.705.  HEALTH CARE PROVIDER DUTIES ON DIAGNOSIS OF PREBORN CHILD'S LIFE-THREATENING DISABILITY. A health care provider who diagnoses a pregnant woman's preborn child as having a life-threatening disability shall, at the time of the diagnosis:

(1)  provide the pregnant woman with a written copy of:

(A)  the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.703; and

(B)  the perinatal palliative care certification form described by Section 161.704; and

(2)  obtain from the pregnant woman the signed perinatal palliative care certification form and place the form in the pregnant woman's medical records.

Sec. 161.706.  EXCEPTION. A health care provider is not required to provide the perinatal palliative care informational materials or perinatal palliative care certification form under this subchapter if the health care provider verifies the pregnant woman's medical record contains a signed perinatal palliative care certification form for that pregnancy as required under Section 161.705(2).

SECTION 2.02.  Chapter 170, Health and Safety Code, is amended by designating Sections 170.001 and 170.002 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; POST-VIABILITY ABORTION PROHIBITED

SECTION 2.03.  Section 170.001, Health and Safety Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a)  "Preborn child" means an unborn child as defined by Section 171.061.

SECTION 2.04.  Section 170.002, Health and Safety Code, is amended to read as follows:

Sec. 170.002.  PROHIBITED ACTS; EXEMPTION. (a) Except as provided by Subsection (b), a person may not intentionally or knowingly perform or induce an abortion on a woman who is pregnant with a preborn [~~viable unborn~~] child during the third trimester of the pregnancy.

(b)  Subsection (a) does not prohibit a person from performing or inducing an abortion if at the time of the abortion the person is a physician and concludes in good faith according to the physician's best medical judgment that[~~:~~

[~~(1)  the fetus is not a viable fetus and the pregnancy is not in the third trimester;~~

[~~(2)~~]  the abortion is necessary due to a medical emergency, as defined by Section 171.002 [~~to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman; or~~

[~~(3)  the fetus has a severe and irreversible abnormality, identified by reliable diagnostic procedures~~].

(c)  A physician who performs or induces an abortion that, according to the physician's best medical judgment at the time of the abortion, is to abort a preborn [~~viable unborn~~] child during the third trimester of the pregnancy shall certify in writing to the commission, on a form prescribed by the commission, the medical indications supporting the physician's judgment that the abortion was authorized by Subsection (b) [~~(b)(2) or (3). If the physician certifies the abortion was authorized by Subsection (b)(3), the physician shall certify in writing on the form the fetal abnormality identified by the physician~~]. The certification must be made not later than the 30th day after the date the abortion was performed or induced.

SECTION 2.05.  Chapter 170, Health and Safety Code, is amended by adding Subchapter B to read as follows:

SUBCHAPTER B. PREBORN NONDISCRIMINATION ACT

Sec. 170.051.  DEFINITION. In this subchapter, "disability" means:

(1)  a physical or mental impairment that would substantially limit one or more of an individual's major life activities;

(2)  an assessment referencing an individual's impairment described by Subdivision (1); or

(3)  a physical disfigurement, scoliosis, dwarfism, Down syndrome, albinism, amelia, or any other type of physical, mental, or intellectual abnormality or disease.

Sec. 170.052.  DISCRIMINATORY ABORTION PROHIBITED. A person may not:

(1)  knowingly perform or induce or attempt to perform or induce on a pregnant woman an abortion based on the race, ethnicity, sex, or disability of the woman's preborn child, including a probability of diagnosis that the child has a disability; or

(2)  use force or the threat of force to intentionally injure or intimidate a person to coerce the performance or inducement or attempted performance or inducement of an abortion based on the race, ethnicity, sex, or disability of the woman's preborn child, including a probability of diagnosis that the child has a disability.

Sec. 170.053.  CRIMINAL PENALTY. (a) A person who violates Section 170.052 commits an offense. An offense under this subsection is a Class A misdemeanor.

(b)  A woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of Section 170.052 may not be prosecuted for a violation of that section or for conspiracy to commit a violation of that section.

Sec. 170.054.  LICENSE SUSPENSION OR REVOCATION. A physician who violates Section 170.052 engages in unprofessional conduct for which the physician's license may be suspended or revoked under Chapter 164, Occupations Code.

Sec. 170.055.  CIVIL REMEDIES. (a) A civil action may be brought against a person who violates Section 170.052 by:

(1)  the woman on whom an abortion was performed or induced or attempted to be performed or induced in violation of Section 170.052;

(2)  the father of the preborn child for an abortion performed or induced or attempted to be performed or induced on a pregnant woman in violation of Section 170.052, unless the woman's pregnancy resulted from the father's criminal conduct; or

(3)  a maternal grandparent of the preborn child for an abortion performed or induced or attempted to be performed or induced in violation of Section 170.052 on a pregnant woman who was less than 18 years of age at the time of the violation, unless the woman's pregnancy resulted from the maternal grandparent's criminal conduct.

(b)  A person who brings an action under this section may obtain:

(1)  injunctive relief;

(2)  damages incurred by the person, including:

(A)  actual damages for all psychological, emotional, and physical injuries resulting from the violation of Section 170.052;

(B)  court costs; and

(C)  reasonable attorney's fees; or

(3)  both injunctive relief and damages.

(c)  An action for damages or injunctive relief under this section must be filed:

(1)  in a district court in the county in which the woman on whom an abortion was performed or induced or attempted to be performed or induced in violation of Section 170.052 resides; and

(2)  not later than the sixth anniversary of the date the abortion was performed or induced or attempted to be performed or induced in violation of Section 170.052.

(d)  The damages and injunctive relief authorized by this section are in addition to any other remedy available by law.

(e)  A civil action under this section may not be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of Section 170.052.

SECTION 2.06.  Section 171.002, Health and Safety Code, is amended by adding Subdivision (3-a) to read as follows:

(3-a)  "Preborn child" means an unborn child as defined by Section 171.061.

SECTION 2.07.  Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Sections 171.0055 and 171.008 to read as follows:

Sec. 171.0055.  REPORT BY ATTORNEY GENERAL. (a) The attorney general shall certify and submit a written report to the governor and the legislature not later than the 31st day after the date any of the following occurs:

(1)  the issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states to prohibit abortion;

(2)  the issuance of any other United States Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of states to prohibit abortion; or

(3)  the adoption of an amendment to the United States Constitution that, wholly or partly, restores to the states the authority to prohibit abortion.

(b)  The attorney general shall make available a copy of the report required by Subsection (a) on the attorney general's Internet website not later than the 31st day after the date the attorney general submits the report.

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.

(c)  A physician who performs or induces an abortion on a pregnant woman shall:

(1)  if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A)  specifies the medical condition the abortion is asserted to address; and

(B)  provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2)  for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d)  The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

SECTION 2.08.  Section 171.012, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

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

(1)  the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A)  the physician's name;

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

(i)  the risks of infection and hemorrhage;

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

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

(C)  the probable gestational age of the preborn [~~unborn~~] child at the time the abortion is to be performed or induced; [~~and~~]

(D)  the medical risks associated with carrying the preborn child to term; and

(E)  the state law prohibiting abortion of a preborn child solely based on the preborn child's race, ethnicity, sex, or disability as defined by Section 170.051, including a probability of diagnosis that the child has a disability;

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

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

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

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

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

(A)  provides the pregnant woman with the printed materials described by Section 171.014; and

(B)  informs the pregnant woman that those materials:

(i)  have been provided by the commission [~~Department of State Health Services~~];

(ii)  are accessible on an Internet website sponsored by the commission [~~department~~];

(iii)  describe the preborn [~~unborn~~] child and list agencies that offer alternatives to abortion; and

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

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

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

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

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

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

(5)  before receiving a sonogram under Subdivision (4)(A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1)  THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 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.

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

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

\_\_\_  I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_  MY PREBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

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

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

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SIGNATURE                        DATE";

(6)  before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7)  the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

(g)  If the pregnant woman's preborn child has been diagnosed with a life-threatening disability, the physician who is to perform the abortion shall, at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50 abortions are performed in any 12-month period:

(1)  orally and in person, inform the pregnant woman of the availability of perinatal palliative care, as that term is defined by Section 161.702; and

(2)  provide the pregnant woman with a written copy of:

(A)  the perinatal palliative care informational materials and list of the perinatal palliative care providers and programs described by Section 161.703; and

(B)  the perinatal palliative care certification form described by Section 161.704.

(h)  If a pregnant woman described by Subsection (g), after receiving from the physician who is to perform or induce the abortion the perinatal palliative care informational materials and certification form described by that subsection in the manner required by that subsection, chooses to have an abortion instead of continuing the pregnancy in perinatal palliative care, the physician may perform or induce the abortion only after:

(1)  the pregnant woman signs the certification form; and

(2)  the physician places the signed certification form in the pregnant woman's medical records.

SECTION 2.09.  Section 171.0121, Health and Safety Code, is amended to read as follows:

Sec. 171.0121.  MEDICAL RECORD. (a) Before the abortion begins, a copy of the signed, written certification received by the physician under Section 171.012(a)(6) and, if applicable, under Section 161.704 must be placed in the pregnant woman's medical records.

(b)  A copy of the signed, written certification required under Sections 171.012(a)(5) and (6) and of any signed, written certification required under Section 161.704 shall be retained by the facility where the abortion is performed or induced until:

(1)  the seventh anniversary of the date the certification [~~it~~] is signed; or

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

(A)  the seventh anniversary of the date the certification [~~it~~] is signed; or

(B)  the woman's 21st birthday.

SECTION 2.10.  Section 171.014(a), Health and Safety Code, is amended to read as follows:

(a)  The department shall publish informational materials that include:

(1)  the information required to be provided under Sections 171.012(a)(1)(B), [~~and~~] (D), and (E) and (a)(2)(A), (B), and (C); and

(2)  the materials required by Sections 161.703, 171.015, and 171.016.

SECTION 2.11.  The heading to Subchapter C, Chapter 171, Health and Safety Code, is amended to read as follows:

SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS PROBABLE GESTATIONAL AGE [~~POST-FERTILIZATION~~]

SECTION 2.12.  Section 171.042, Health and Safety Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a)  "Probable gestational age" means the duration of a pregnancy measured by the number of weeks and days that have elapsed from the first day of the pregnant woman's last menstrual period out of an expected 40-week gestation.

SECTION 2.13.  Sections 171.043, 171.044, and 171.045, Health and Safety Code, are amended to read as follows:

Sec. 171.043.  DETERMINATION OF PROBABLE GESTATIONAL [~~POST-FERTILIZATION~~] AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:

(1)  making a determination of the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child; or

(2)  possessing and relying on a determination of the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child made by another physician.

Sec. 171.044.  ABORTION OF PREBORN [~~UNBORN~~] CHILD OF 20 OR MORE WEEKS PROBABLE GESTATIONAL [~~POST-FERTILIZATION~~] AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child is 20 or more weeks.

Sec. 171.045.  METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:

(1)  the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child is 20 or more weeks; or

(2)  the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child has not been determined but could reasonably be 20 or more weeks.

(b)  Except as otherwise provided by Section 171.046(a)(3), a physician performing or inducing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the preborn [~~unborn~~] child to survive.

SECTION 2.14.  Section 171.046(a), Health and Safety Code, is amended to read as follows:

(a)  The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed or induced if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

(1)  the immediate abortion of her pregnancy without the delay necessary to determine the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child;

(2)  the abortion of her pregnancy even though the probable gestational [~~post-fertilization~~] age of the preborn [~~unborn~~] child is 20 or more weeks; or

(3)  the use of a method of abortion other than a method described by Section 171.045(b).

SECTION 2.15.  Section 285.202(a), Health and Safety Code, is amended to read as follows:

(a)  In this section, "medical emergency" means[~~:~~

[~~(1)~~]  a condition exists that, in a physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function[~~; or~~

[~~(2)  the fetus has a severe fetal abnormality~~].

SECTION 2.16.  Section 164.052(a), Occupations Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(A)  fraudulently purchased or issued;

(B)  counterfeited; or

(C)  materially altered;

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

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

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

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

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

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

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

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

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

(18)  performs or induces or attempts to perform or induce an abortion on a woman who is pregnant with a preborn [~~viable unborn~~] child during the third trimester of the pregnancy unless[~~:~~

[~~(A)~~]  the abortion is necessary due to a medical emergency, as defined by Section 171.002, Health and Safety Code [~~to prevent the death of the woman;~~

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

[~~(C)  the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis~~];

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

(20)  otherwise performs or induces or attempts to perform or induce an abortion on an unemancipated minor in violation of Chapter 33, Family Code;

(21)  performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, F, or G, Chapter 171, Health and Safety Code; [~~or~~]

(22)  in complying with the procedures outlined in Sections 166.045 and 166.046, Health and Safety Code, wilfully fails to make a reasonable effort to transfer a patient to a physician who is willing to comply with a directive; or

(23)  performs or induces or attempts to perform or induce an abortion or engages in other conduct in violation of Section 170.052, Health and Safety Code.

SECTION 2.17.  Section 164.055(b), Occupations Code, is amended to read as follows:

(b)  The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002 or 170.052, Health and Safety Code, or Subchapter C, F, or G, Chapter 171, Health and Safety Code.

SECTION 2.18.  The following provisions of the Health and Safety Code are repealed:

(1)  Section 170.001(3);

(2)  Sections 171.042(1) and (2);

(3)  Section 171.046(c); and

(4)  Sections 285.202(a-1) and (a-2).

ARTICLE 3. ABORTION PROHIBITED AFTER DETECTION OF FETAL HEARTBEAT

SECTION 3.01.  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 amount of time that has elapsed from the first day of a woman's last menstrual period.

(3)  "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and 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 an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

(7)  "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Sec. 171.202.  LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

(1)  fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

(2)  cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

(3)  Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

(4)  to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Sec. 171.203.  DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b)  Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

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

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

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

(d)  A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1)  the estimated gestational age of the unborn child;

(2)  the method used to estimate the gestational age; and

(3)  the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Sec. 171.204.  PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 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 as required by Section 171.203 and did not detect a fetal heartbeat.

(c)  This section does not affect:

(1)  the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2)  any other provision of state law that regulates or prohibits abortion.

Sec. 171.205.  EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a) Sections 171.203 and 171.204 do 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).

Sec. 171.206.  CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b)  This subchapter may not be construed to:

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

(2)  wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3)  restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207.  LIMITATIONS ON PUBLIC ENFORCEMENT. (a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b)  Subsection (a) may not be construed to:

(1)  legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2)  limit in any way or affect the availability of a remedy established by Section 171.208; or

(3)  limit the enforceability of any other laws that regulate or prohibit abortion.

Sec. 171.208.  CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1)  performs or induces an abortion in violation of this chapter;

(2)  knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this chapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this chapter; or

(3)  intends to engage in the conduct described by Subdivision (1) or (2).

(b)  If a claimant prevails in an action brought under this section, the court shall award:

(1)  injunctive relief sufficient to prevent the defendant from violating this chapter or engaging in acts that aid or abet violations of this chapter;

(2)  statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this chapter, and for each abortion performed or induced in violation of this chapter that the defendant aided or abetted; and

(3)  costs and attorney's fees.

(c)  Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsections (b)(2) and (3) in a previous action for that particular abortion performed or induced in violation of this chapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this chapter.

(d)  Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e)  Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1)  ignorance or mistake of law;

(2)  a defendant's belief that the requirements of this chapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this chapter;

(4)  a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5)  non-mutual issue preclusion or non-mutual claim preclusion;

(6)  the consent of the unborn child's mother to the abortion; or

(7)  any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

(f)  It is an affirmative defense if:

(1)  a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this chapter; or

(2)  a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this chapter.

(f-1)  The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

(g)  This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

(h)  Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

(i)  Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

Sec. 171.209.  CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1)  the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2)  the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b)  A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

(1)  the defendant has standing to assert the third-party rights of a woman or a group of women seeking an abortion in accordance with Subsection (a); and

(2)  the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or a group of women seeking an abortion.

(c)  A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

(1)  an award of relief will prevent a woman or a group of women from obtaining an abortion; or

(2)  an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

(d)  A defendant may not establish an undue burden under this section by:

(1)  merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

(2)  arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e)  The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

(f)  Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

Sec. 171.210.  CIVIL LIABILITY: VENUE. (a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

(1)  the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2)  the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3)  the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4)  the county of residence for the claimant if the claimant is a natural person residing in this state.

(b)  If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171.211.  SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

(1)  the Uniform Declaratory Judgments Act; and

(2)  Chapter 37, Civil Practice and Remedies Code.

(b)  This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c)  A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Sec. 171.212.  SEVERABILITY. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b)  If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1)  If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c)  The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

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

(e)  No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1)  is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2)  is not a formal amendment of the language in a statute; and

(3)  no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

SECTION 3.02.  Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022.  AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, or any governmental entity or public official in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b)  For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1)  dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2)  enters judgment in the party's favor on any such claim or cause of action.

(c)  Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1)  the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2)  the time for seeking appellate review expires.

(d)  It is not a defense to an action brought under Subsection (c) that:

(1)  a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2)  the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3)  the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 3.03.  Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036.  CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b)  A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c)  Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 3.04.  Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005.  COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

SECTION 3.05.  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; and

(11)  the information required under Sections 171.008(a) and (c).

ARTICLE 4. PROHIBITION OF ABORTION

SECTION 4.01.  Chapter 170, Health and Safety Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. PROHIBITION OF ABORTION

Sec. 170.101.  ABORTION PROHIBITED. Notwithstanding any other law, a person may not perform, induce, or attempt to perform or induce an abortion unless the abortion is performed, induced, or attempted to be performed or induced by a physician because of a medical emergency as defined by Section 171.002.

Sec. 170.102.  CIVIL REMEDY. (a) A civil action may be brought against a person who violated Section 170.101 by:

(1)  the woman on whom an abortion was performed, induced, or attempted in violation of Section 170.101;

(2)  the father of the preborn child for an abortion performed, induced, or attempted on a pregnant woman in violation of Section 170.101, unless the woman's pregnancy resulted from the father's criminal conduct; or

(3)  a maternal grandparent of the preborn child for an abortion performed, induced, or attempted in violation of Section 170.101 on a pregnant woman who was less than 18 years of age at the time of the violation, unless the woman's pregnancy resulted from the maternal grandparent's criminal conduct.

(b)  A person who brings an action under this section may obtain:

(1)  injunctive relief;

(2)  damages incurred by the person, including:

(A)  actual damages for all psychological, emotional, and physical injuries resulting from the violation of Section 170.101;

(B)  court costs; and

(C)  reasonable attorney's fees; or

(3)  both injunctive relief and damages.

(c)  An action for damages or injunctive relief under this section must be filed:

(1)  in a district court in the county in which the woman on whom an abortion was performed, induced, or attempted in violation of Section 170.101 resides; and

(2)  not later than the sixth anniversary of the date the abortion was performed, induced, or attempted in violation of Section 170.101.

(d)  The damages and injunctive relief authorized by this section are in addition to any other remedy available by law.

(e)  A civil action under this section may not be brought against a woman on whom an abortion is performed, induced, or attempted in violation of Section 170.101.

Sec. 170.103.  REVOCATION OR SUSPENSION OF LICENSE. A physician who violates Section 170.101 engages in unprofessional conduct for which the physician's license may be suspended or revoked under Chapter 164, Occupations Code.

SECTION 4.02.  Section 19.06, Penal Code, is amended to read as follows:

Sec. 19.06.  APPLICABILITY TO CERTAIN CONDUCT. Notwithstanding any other law, this [~~This~~] chapter applies [~~does not apply~~] to the death of a preborn [~~an unborn~~] child unless [~~if~~] the conduct charged is:

(1)  conduct committed by the mother of the preborn [~~unborn~~] child; or

(2)  an abortion performed, induced, or attempted to be performed or induced by a physician because of a medical emergency as defined by Section 171.002, Health and Safety Code [~~a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure;~~

[~~(3)  a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or~~

[~~(4)  the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law~~].

SECTION 4.03.  Section 22.12, Penal Code, is amended to read as follows:

Sec. 22.12.  APPLICABILITY TO CERTAIN CONDUCT. Notwithstanding any other law, this [~~This~~] chapter applies [~~does not apply~~] to conduct charged as having been committed against an individual who is a preborn [~~an unborn~~] child unless [~~if~~] the conduct is:

(1)  committed by the mother of the preborn [~~unborn~~] child; or

(2)  an abortion performed, induced, or attempted to be performed or induced by a physician because of a medical emergency as defined by Section 171.002, Health and Safety Code [~~a lawful medical procedure performed by a physician or other health care provider with the requisite consent;~~

[~~(3)  a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or~~

[~~(4)  the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law~~].

SECTION 4.04.  The following provisions are repealed:

(1)  Section 33.002(b), Family Code; and

(2)  Section 171.063(b), Health and Safety Code.

SECTION 4.05.  (a) Subchapter C, Chapter 170, Health and Safety Code, as added by this article, and Sections 19.06 and 22.12, Penal Code, as amended by this article, shall be construed, as a matter of state law, to be enforceable to the maximum possible extent consistent with but not further than federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b)  If any court determines that a provision described by Subsection (a) of this section is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision described by Subsection (a) of this section or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this section, the Texas Supreme Court shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c)  An executive or administrative state official may not decline to enforce a provision described by Subsection (a) of this section, or adopt a construction of that provision or this section in a way that narrows its applicability, based on the official's own beliefs concerning the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing that provision.

(d)  Sections 19.06 and 22.12, Penal Code, as amended by this article, may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed, induced, or attempted to be performed or induced in violation of Section 170.101, Health and Safety Code, as added by this article.

ARTICLE 5. TRANSITIONS, SEVERABILITY, PREEMPTION, CONSTITUTIONALITY, AND EFFECTIVE DATE

SECTION 5.01.  Not later than December 1, 2021:

(1)  the Health and Human Services Commission shall:

(A)  develop the perinatal palliative care informational materials, list of perinatal palliative care providers and programs, and perinatal palliative care certification form required by Subchapter X, Chapter 161, Health and Safety Code, as added by this Act; and

(B)  update any forms and informational materials under Subchapter B, Chapter 171, Health and Safety Code, as amended by this Act; and

(2)  the executive commissioner of the Health and Human Services Commission shall adopt any rules necessary to implement Subchapter X, Chapter 161, Health and Safety Code, as added by this Act, and Subchapter B, Chapter 171, Health and Safety Code, as amended by this Act.

SECTION 5.02.  (a) Subchapter X, Chapter 161, Health and Safety Code, as added by this Act, applies only to a diagnosis of a life-threatening disability of a pregnant woman's preborn child made on or after January 1, 2022.

(b)  Subchapter B, Chapter 170, Health and Safety Code, as added by this Act, Subchapters B and C, Chapter 171, Health and Safety Code, as amended by this Act, and Chapter 164, Occupations Code, as amended by this Act, apply only to an abortion performed, induced, or attempted to be performed or induced or other conduct that occurred on or after January 1, 2022. An abortion performed, induced, or attempted to be performed or induced or other conduct that occurred before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c)  Subchapter C, Chapter 170, Health and Safety Code, as added by this Act, applies only to an abortion that is performed, induced, or attempted to be performed or induced on or after the effective date of Article 4 of this Act.

(d)  Subchapter H, Chapter 171, Health and Safety Code, as added by this Act, applies only to an abortion performed, induced, or attempted to be performed or induced on or after January 1, 2022.

(e)  Sections 19.06 and 22.12, Penal Code, as amended by this Act, apply only to conduct that occurs on or after the effective date of Article 4 of this Act. Conduct that occurs before that date is governed by the law in effect on the date the conduct occurred, and that law is continued in effect for that purpose.

(f)  Sections 19.06 and 22.12, Penal Code, as amended by this Act, apply only to an offense committed on or after the effective date of Article 4 of this Act. An offense committed before that date is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the effective date of Article 4 of this Act if any element of the offense occurs before that date.

SECTION 5.03.  (a) It is the intent of the legislature that if a court suspends enforcement of any provision of this Act, the suspension is not to be regarded as repealing that provision.

(b)  If any provision of this Act is held invalid or if the application of any provision to any person or circumstance is held invalid, the invalidity of that provision or application does not affect any other provision or application of this Act that can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable. It is the intent of the legislature that any invalidity or potential invalidity of a provision of this Act does not impair the immediate and continuing enforceability of the remaining provisions. It is furthermore the intent of the legislature that the provisions of this Act do not have the effect of repealing or limiting any other laws of this state.

(c)  The legislature intends that each provision of this Act as applicable to each individual woman is severable from each other provision of this Act. In the unexpected event that a court finds the application of any provision of this Act to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of the provision to those women is severed from the application of the remaining provisions of this Act that do not impose an undue burden, and those remaining applications remain in force and unaffected, consistent with Section 5.02 of this article.

SECTION 5.04.  (a) After the issuance of a decision by the United States Supreme Court overruling any prior ruling that prohibits states from wholly or partly prohibiting abortion, the issuance of any court order or judgment restoring, expanding, or clarifying the authority of states to wholly or partly prohibit or regulate abortion, or the effective date of an amendment to the United States Constitution restoring, expanding, or clarifying the authority of states to wholly or partly prohibit or regulate abortion, the attorney general may apply to the appropriate state or federal court for:

(1)  a declaration that any one or more provisions of this Act are constitutional; or

(2)  a judgment or order lifting an injunction against the enforcement of any one or more provisions of this Act.

(b)  If the attorney general fails to apply for the relief described by Subsection (a) of this section not later than the 30th day after the date an event described by that subsection occurs, any district attorney may apply to the appropriate state or federal court for the relief described by that subsection.

SECTION 5.05.  The Health and Human Services Commission is required to implement a provision of this Act only if the legislature appropriates money to the commission specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the commission may, but is not required to, implement a provision of this Act using other appropriations that are available for that purpose.

SECTION 5.06.  (a)  Except as otherwise provided by this section, this Act takes effect September 1, 2021.

(b)  Article 4 of this Act takes effect the earlier of:

(1)  to the extent permitted, on the 30th day after:

(A)  the issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states of the United States to prohibit abortion;

(B)  the issuance of any other United States Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of the states to prohibit abortion; or

(C)  adoption of an amendment to the United States Constitution that, wholly or partly, restores to the states the authority to prohibit abortion;

(2)  the 91st day after the date the attorney general submits a report required by Section 171.0055, Health and Safety Code, as added by this Act, that certifies that a court of competent jurisdiction has held provisions substantially similar to the provisions in Article 4 of this Act to be constitutional; or

(3)  September 1, 2025.