

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

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

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

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

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

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

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

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

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

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

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

4 Sec. 171.203. ABORTION OF UNBORN CHILD WITH DETECTABLE
5 FETAL HEARTBEAT PROHIBITED. (a) Except as provided by Section
6 171.204, a physician may not intentionally perform or induce an
7 abortion on a pregnant woman with the specific intent of causing or
8 abetting the termination of the life of the woman's unborn child if
9 the physician detected a fetal heartbeat for the unborn child under
10 Section 171.202 or failed to perform a test to detect a fetal
11 heartbeat.

12 (b) A physician does not violate this section if the
13 physician performed a test for a fetal heartbeat under Section
14 171.202 and did not detect a fetal heartbeat.

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

18 Sec. 171.204. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

19 (a) This subchapter does not apply if a physician believes a
20 medical emergency exists that prevents compliance with this
21 subchapter.

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

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

27 (2) the medical condition of the pregnant woman that

1 prevented compliance with this subchapter.

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

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

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

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

19 (b) A physician shall:

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

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

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

27 (c) The report must include:

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

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

5 (3) the type of abortion procedure;

6 (4) the date the abortion was performed;

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

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

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

14 (8) the number of previous live births of the patient;

15 ~~and~~

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

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

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

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

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

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1 of this Act.

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