

By: Slawson

H.B. No. 1515

A BILL TO BE ENTITLED

AN ACT

1
2 relating to abortion, including abortions after detection of an
3 unborn child's heartbeat; authorizing a private civil right of
4 action.

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

6 SECTION 1. This Act shall be known as the Texas Heartbeat
7 Act.

8 SECTION 2. The legislature finds that the State of Texas
9 never repealed, either expressly or by implication, the state
10 statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113
11 (1973), that prohibit and criminalize abortion unless the mother's
12 life is in danger.

13 SECTION 3. Chapter 171, Health and Safety Code, is amended
14 by adding Subchapter H to read as follows:

15 SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

16 Sec. 171.201. DEFINITIONS. In this subchapter:

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

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

22 (3) "Gestational sac" means the structure comprising
23 the extraembryonic membranes that envelop the unborn child and that
24 is typically visible by ultrasound after the fourth week of

1 pregnancy.

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

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

7 (A) begins with fertilization;

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

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

12 (6) "Standard medical practice" means the degree of
13 skill, care, and diligence that an obstetrician of ordinary
14 judgment, learning, and skill would employ in like circumstances.

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

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

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

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

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

27 (4) to make an informed choice about whether to

1 continue her pregnancy, the pregnant woman has a compelling
2 interest in knowing the likelihood of her unborn child surviving to
3 full-term birth based on the presence of cardiac activity.

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

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

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

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

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

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

24 (1) the estimated gestational age of the unborn child;
25 (2) the method used to estimate the gestational age;

26 and

27 (3) the test used for detecting a fetal heartbeat,

1 including the date, time, and results of the test.

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

8 (b) A physician does not violate this section if the
9 physician performed a test for a fetal heartbeat as required by
10 Section 171.203 and did not detect a fetal heartbeat.

11 (c) This section does not affect:

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

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

17 Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

18 (a) Section 171.204 does not apply if a physician believes a
19 medical emergency exists that prevents compliance with this
20 subchapter.

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

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

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

1 (c) A physician performing or inducing an abortion under
2 this section shall maintain in the physician's practice records a
3 copy of the notations made under Subsection (b).

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

7 (b) This subchapter may not be construed to:

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

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

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

18 Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) The
19 requirements of this subchapter shall be enforced exclusively
20 through the private civil enforcement actions described in section
21 171.208. No enforcement of this subchapter, and no enforcement of
22 Chapters 19 and 22, Penal Code, in response to violations of this
23 subchapter, may be taken or threatened by this state, a political
24 subdivision, a district or county attorney, or an executive or
25 administrative officer or employee of this state or a political
26 subdivision against any person, except as provided in section
27 171.208.

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

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

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

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

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

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

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

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

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

26 (2) statutory damages in an amount of not less than
27 \$10,000 for each abortion that the defendant performed or induced

1 in violation of this chapter, and for each abortion performed or
2 induced in violation of this chapter that the defendant aided or
3 abetted; and

4 (3) costs and attorney's fees.

5 (c) Notwithstanding Subsection (b), a court may not award
6 relief under this section if the defendant demonstrates that the
7 defendant previously paid statutory damages in a previous action
8 for that particular abortion performed or induced in violation of
9 this chapter, or for the particular conduct that aided or abetted an
10 abortion performed or induced in violation of this chapter.

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

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

16 (1) ignorance or mistake of law;

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

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

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

26 (5) nonmutual issue preclusion or nonmutual claim
27 preclusion;

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

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

7 (f) It is an affirmative defense if a person sued under
8 Subsection (a)(2) reasonably believed, after conducting a
9 reasonable investigation, that the physician performing or
10 inducing the abortion had complied or would comply with this
11 chapter. The defendant has the burden of proving the affirmative
12 defense under this subsection by a preponderance of the evidence.

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

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

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

1 section.

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

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

11 (2) the defendant is an abortion provider, an employee
12 of an abortion provider, or a physician who performs abortions.

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

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

19 (2) the defendant demonstrates that the relief sought
20 by the claimant will impose an undue burden on women seeking an
21 abortion.

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

24 (1) an award of relief will prevent an identifiable
25 woman or an identifiable group of women from obtaining an abortion;
26 or

27 (2) an award of relief will place a substantial

1 obstacle in the path of an identifiable woman or an identifiable
2 group of women who are seeking an abortion.

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

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

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

11 (e) The affirmative defense under Subsection (b) is not
12 available if the United States Supreme Court overrules *Roe v. Wade*,
13 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
14 (1992), regardless of whether the conduct on which the cause of
15 action is based under Section 171.208 occurred before the Supreme
16 Court overruled either of those decisions.

17 Sec. 171.210. CIVIL LIABILITY: VENUE. Notwithstanding any
18 other law, including Section 15.002, Civil Practice and Remedies
19 Code, a civil action brought under Section 171.211 shall be brought
20 in:

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

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

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

27 (4) the county of residence for the claimant if the

1 claimant is a natural person residing in this state.

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

5 (1) the Uniform Declaratory Judgments Act; and

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

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

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

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

25 (b) If any application of any provision in this chapter to
26 any person, group of persons, or circumstances is found by a court
27 to be invalid or unconstitutional, the remaining applications of

1 that provision to all other persons and circumstances shall be
2 severed and may not be affected. All constitutionally valid
3 applications of this chapter shall be severed from any applications
4 that a court finds to be invalid, leaving the valid applications in
5 force, because it is the legislature's intent and priority that the
6 valid applications be allowed to stand alone. Even if a reviewing
7 court finds a provision of this chapter to impose an undue burden in
8 a large or substantial fraction of relevant cases, the applications
9 that do not present an undue burden shall be severed from the
10 remaining provisions and shall remain in force, and shall be
11 treated as if the legislature had enacted a statute limited to the
12 persons, group of persons, or circumstances for which the statute's
13 application does not present an undue burden.

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

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

25 (e) No court may decline to enforce the severability
26 requirements of Subsections (a), (b), (c), and (d) on the ground
27 that severance would rewrite the statute or involve the court in

1 legislative or lawmaking activity. A court that declines to
2 enforce or enjoins a state official from enforcing a statutory
3 provision does not rewrite a statute, as the statute continues to
4 contain the same words as before the court's decision. A judicial
5 injunction or declaration of unconstitutionality:

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

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

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

15 (f) If any federal or state court declares unconstitutional
16 or enjoins the enforcement of a provision in this chapter and fails
17 to enforce the severability requirements of Subsections (a), (b),
18 (c), (d), and (e), the executive commissioner shall:

19 (1) adopt rules that enforce the requirements
20 described by this chapter to the maximum possible extent while
21 avoiding the constitutional problems or other problems identified
22 by the federal or state court; and

23 (2) issue notice of those rules, not later than the
24 30th day after the date of the court ruling.

25 (g) If the executive commissioner fails to adopt the rules
26 and issue notice under Subsection (f), a person may petition for a
27 writ of mandamus requiring the executive commissioner to adopt the

1 rules and issue notice.

2 SECTION 4. Chapter 30, Civil Practice and Remedies Code, is
3 amended by adding Section 30.022 to read as follows:

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

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

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

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

24 (c) Regardless of whether a prevailing party sought to
25 recover costs or attorney's fees in the underlying action, a
26 prevailing party under this section may bring a civil action to
27 recover costs and attorney's fees against a person, including an

1 entity, attorney, or law firm, that sought declaratory or
2 injunctive relief described by Subsection (a) not later than the
3 third anniversary of the date on which, as applicable:

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

6 (2) the time for seeking appellate review expires.

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

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

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

14 SECTION 5. Subchapter C, Chapter 311, Government Code, is
15 amended by adding Section 311.036 to read as follows:

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

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

27 (c) Every statute that regulates or prohibits abortion is

1 severable in each of its applications to every person and
2 circumstance. If any statute that regulates or prohibits abortion
3 is found by any court to be unconstitutional, either on its face or
4 as applied, then all applications of that statute that do not
5 violate the constitutional rights of women seeking abortions shall
6 be severed from the unconstitutional applications and shall remain
7 enforceable, notwithstanding any other law.

8 SECTION 6. Subchapter A, Chapter 171, Health and Safety
9 Code, is amended by adding Section 171.008 to read as follows:

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

16 (b) A physician shall:

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

19 (2) maintain a copy of the document described by
20 Subsection (a) in the physician's practice records.

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

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

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

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

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

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

9 SECTION 7. Section 171.012, Health and Safety Code, is
10 amended by amending Subsection (a) and adding Subsection (g) to
11 read as follows:

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

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

17 (A) the physician's name;

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

21 (i) the risks of infection and hemorrhage;

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

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

1 (C) the probable gestational age of the unborn
2 child at the time the abortion is to be performed or induced; and

3 (D) the medical risks associated with carrying
4 the child to term;

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

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

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

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

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

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

20 (B) informs the pregnant woman that those
21 materials:

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

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

26 (iii) describe the unborn child and list
27 agencies that offer alternatives to abortion; and

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

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

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

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

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

25 (D) the physician who is to perform or induce the
26 abortion or an agent of the physician who is also a sonographer
27 certified by a national registry of medical sonographers makes

1 audible the heart auscultation for the pregnant woman to hear, if
2 present, in a quality consistent with current medical practice and
3 provides, in a manner understandable to a layperson, a simultaneous
4 verbal explanation of the heart auscultation; and

5 (E) if a fetal heartbeat is detected under
6 Section 171.203, the physician who is to perform or induce the
7 abortion informs the woman in writing of the statistical
8 probability of bringing the unborn child to term:

9 (i) to the best of the physician's
10 knowledge, based on the gestational age of the unborn child; or

11 (ii) as provided by commission rule;

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

17 "ABORTION AND SONOGRAM ELECTION

18 (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY
19 SECTIONS [171.012](#)(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN
20 PROVIDED AND EXPLAINED TO ME.

21 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
22 ABORTION.

23 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR
24 TO RECEIVING AN ABORTION.

25 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE
26 SONOGRAM IMAGES.

27 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE

1 HEARTBEAT.

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

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

10 ____ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
11 WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY
12 CODE.

13 ____ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL
14 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC
15 PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

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

18 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE
19 NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER
20 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE
21 THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

22 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR
23 MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED
24 UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS
25 IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS
26 AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION
27 PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

1 _____
2 SIGNATURE DATE";

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

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

10 (g) The executive commissioner may adopt rules that specify
11 the information required under Subsection (a)(4)(E) regarding the
12 statistical probability of bringing an unborn child to term based
13 on the gestational age of the child. The information in the rules
14 must be based on available medical evidence.

15 SECTION 8. Section 245.011(c), Health and Safety Code, is
16 amended to read as follows:

17 (c) The report must include:

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

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

22 (3) the type of abortion procedure;

23 (4) the date the abortion was performed;

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

26 (6) the probable post-fertilization age of the unborn
27 child based on the best medical judgment of the attending physician

1 at the time of the procedure;

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

4 (8) the number of previous live births of the patient;
5 ~~and~~

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

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

11 (11) whether the physician made a determination of the
12 presence of a fetal heartbeat in accordance with Section 171.203;
13 and

14 (12) whether the physician performed or induced the
15 abortion under circumstances described by Section 171.205.

16 SECTION 10. Every provision in this Act and every
17 application of the provision in this Act are severable from each
18 other. If any provision or application of any provision in this Act
19 to any person, group of persons, or circumstance is held by a court
20 to be invalid, the invalidity does not affect the other provisions
21 or applications of this Act.

22 SECTION 11. The change in law made by this Act applies only
23 to an abortion performed or induced on or after the effective date
24 of this Act.

25 SECTION 12. This Act takes effect September 1, 2021.