

By: Schaefer

H.B. No. 4339

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibiting discriminatory abortions; authorizing
3 disciplinary action; providing a civil remedy; creating a criminal
4 offense.

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

6 SECTION 1. This Act may be cited as the Preborn
7 Nondiscrimination Act.

8 SECTION 2. The legislature finds that:

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

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

16 SECTION 3. Chapter 170, Health and Safety Code, is amended
17 by designating Sections 170.001 and 170.002 as Subchapter A and
18 adding a subchapter heading to read as follows:

19 SUBCHAPTER A. GENERAL PROVISIONS; POST-VIABILITY ABORTION

20 PROHIBITED

21 SECTION 4. Chapter 170, Health and Safety Code, is amended
22 by adding Subchapter B to read as follows:

23 SUBCHAPTER B. DISCRIMINATORY ABORTION PROHIBITED

24 Sec. 170.051. DEFINITION. In this subchapter, "disability"

1 means:

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

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

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

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

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

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

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

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

1 of that section.

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

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

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

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

14 (3) a maternal grandparent of the preborn child for an
15 abortion performed, induced, or attempted in violation of Section
16 170.052 on a pregnant woman who was less than 18 years of age at the
17 time of the violation, unless the woman's pregnancy resulted from
18 the maternal grandparent's criminal conduct.

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

21 (1) injunctive relief;

22 (2) damages incurred by the person, including:

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

26 (B) court costs; and

27 (C) reasonable attorney's fees; or

1 (3) both injunctive relief and damages.

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

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

7 (2) not later than the sixth anniversary of the date
8 the abortion was performed, induced, or attempted in violation of
9 Section 170.052.

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

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

15 SECTION 5. Section [171.002](#), Health and Safety Code, is
16 amended by adding Subdivision (3-a) to read as follows:

17 (3-a) "Preborn child" means an unborn child as defined
18 by Section [171.061](#).

19 SECTION 6. Section [171.012](#)(a), Health and Safety Code, is
20 amended to read as follows:

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

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

26 (A) the physician's name;

27 (B) the particular medical risks associated with

1 the particular abortion procedure to be employed, including, when
2 medically accurate:

3 (i) the risks of infection and hemorrhage;

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

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

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

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

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

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

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

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

27 (C) public and private agencies provide

1 pregnancy prevention counseling and medical referrals for
2 obtaining pregnancy prevention medications or devices, including
3 emergency contraception for victims of rape or incest;

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

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

8 (B) informs the pregnant woman that those
9 materials:

10 (i) have been provided by the Health and
11 Human Services Commission [~~Department of State Health Services~~];

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

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

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

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

25 (A) 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 performs a

1 sonogram on the pregnant woman on whom the abortion is to be
2 performed or induced;

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

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

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

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

25 "ABORTION AND SONOGRAM ELECTION

26 (1) THE INFORMATION AND PRINTED MATERIALS
27 DESCRIBED BY SECTIONS [171.012](#)(a)(1)-(3), TEXAS HEALTH

1 AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO
2 ME.

3 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF
4 AN ABORTION.

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

7 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW
8 THE SONOGRAM IMAGES.

9 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR
10 THE HEARTBEAT.

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

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

20 ____ I AM A MINOR AND OBTAINING AN ABORTION IN
21 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER
22 CHAPTER 33, TEXAS FAMILY CODE.

23 ____ MY FETUS HAS AN IRREVERSIBLE MEDICAL
24 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE
25 DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL
26 FILE.

27 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL

1 AND WITHOUT COERCION.

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

7 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100
8 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT
9 IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH
10 AND SAFETY CODE, OR A FACILITY IN WHICH [~~THAT PERFORMS~~]
11 MORE THAN 50 ABORTIONS ARE PERFORMED IN ANY 12-MONTH
12 PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER
13 THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE
14 ABORTION PROCEDURE. MY PLACE OF RESIDENCE
15 IS:_____.

16 _____
17 SIGNATURE DATE";

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

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

25 SECTION 7. Section 171.014(a), Health and Safety Code, is
26 amended to read as follows:

27 (a) The department shall publish informational materials

1 that include:

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

5 (2) the materials required by Sections 171.015 and
6 171.016.

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

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

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

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

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

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

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

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

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

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

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

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

12 (A) fraudulently purchased or issued;

13 (B) counterfeited; or

14 (C) materially altered;

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

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

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

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

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

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

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

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

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

12 (18) performs an abortion on a woman who is pregnant
13 with a viable preborn [~~unborn~~] child, as defined by Section
14 171.002, Health and Safety Code, during the third trimester of the
15 pregnancy unless:

16 (A) the abortion is necessary to prevent the
17 death of the woman;

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

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

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

1 Section 171.002, Health and Safety Code;

2 (20) otherwise performs an abortion on an
3 unemancipated minor in violation of Chapter 33, Family Code;

4 (21) performs or induces or attempts to perform or
5 induce an abortion in violation of Subchapter C, F, or G, Chapter
6 171, Health and Safety Code; ~~or~~

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

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

14 SECTION 9. Section 164.055(b), Occupations Code, is amended
15 to read as follows:

16 (b) The sanctions provided by Subsection (a) are in addition
17 to any other grounds for refusal to admit persons to examination
18 under this subtitle or to issue a license or renew a license to
19 practice medicine under this subtitle. The criminal penalties
20 provided by Section 165.152 do not apply to a violation of Section
21 170.002 or 170.052, Health and Safety Code, or Subchapter C, F, or
22 G, Chapter 171, Health and Safety Code.

23 SECTION 10. Not later than December 1, 2021:

24 (1) the Health and Human Services Commission shall
25 update any forms and informational materials under Subchapter B,
26 Chapter 171, Health and Safety Code, as amended by this Act; and

27 (2) the executive commissioner of the Health and Human

1 Services Commission shall adopt any rules necessary to implement
2 Subchapter B, Chapter 171, Health and Safety Code, as amended by
3 this Act.

4 SECTION 11. The changes in law made by this Act to Chapters
5 170 and 171, Health and Safety Code, and Chapter 164, Occupations
6 Code, apply only to an abortion performed, induced, or attempted or
7 other conduct that occurred on or after January 1, 2022. An
8 abortion performed, induced, or attempted or other conduct that
9 occurred before that date is governed by the law in effect
10 immediately before the effective date of this Act, and that law is
11 continued in effect for that purpose.

12 SECTION 12. It is the intent of the legislature that every
13 provision, section, subsection, sentence, clause, phrase, or word
14 in this Act, and every application of the provisions in this Act to
15 each person or entity, are severable from each other. If any
16 application of any provision in this Act to any person, group of
17 persons, or circumstances is found by a court to be invalid for any
18 reason, the remaining applications of that provision to all other
19 persons and circumstances shall be severed and may not be affected.

20 SECTION 13. This Act takes effect September 1, 2021.