

By: Howard

H.B. No. 4389

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to repealing or replacing medically unnecessary and  
3 outdated abortion restrictions.

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

5 SECTION 1. This Act may be cited as the Abortion is Health  
6 Care Act.

7 (b) The legislature finds that:

8 (1) comprehensive reproductive health care, including  
9 safe abortion, is a vital component of a person's overall health and  
10 of their social and economic equality;

11 (2) abortion is one of the safest medical procedures  
12 in the United States, as demonstrated by available data, including  
13 from the federal Centers for Disease Control and Prevention,  
14 showing abortion has a more than 99 percent safety record;

15 (3) any regulation of medical care must have a  
16 legitimate purpose and advance the goals of improving the quality  
17 of care and increasing access to care;

18 (4) according to the American College of Obstetricians  
19 and Gynecologists, American Medical Association, American Academy  
20 of Family Physicians, and American Osteopathic Association,  
21 "[w]omen's access to high-quality, evidence-based abortion care  
22 should not be limited by laws enacted under the guise of patient  
23 safety but that, in fact, harm women's health"; and

24 (5) the 334 restrictions on abortion providers and

1 their patients adopted nationally since 2011 and the onerous  
2 restrictions enacted in this state based on pretextual reasons are  
3 a systematic attempt to eliminate access to safe and legal medical  
4 care.

5 SECTION 2. The following provisions are repealed:

- 6 (1) Chapter 33, Family Code;
- 7 (2) Sections 151.002(c), (d), (e), (f), and (g),  
8 Family Code;
- 9 (3) Section 32.005, Health and Safety Code;
- 10 (4) Sections 171.002(3) and (4), Health and Safety  
11 Code;
- 12 (5) Section 171.0031, Health and Safety Code;
- 13 (6) Section 171.004, Health and Safety Code;
- 14 (7) Section 171.005, Health and Safety Code;
- 15 (8) Section 171.006, Health and Safety Code, as added  
16 by Chapter 4 (H.B. 13), Acts of the 85th Legislature, First Called  
17 Session, 2017;
- 18 (9) Section 171.006, Health and Safety Code, as added  
19 by Chapter 9 (H.B. 215), Acts of the 85th Legislature, First Called  
20 Session, 2017;
- 21 (10) Section 171.012, Health and Safety Code;
- 22 (11) Section 171.0121, Health and Safety Code;
- 23 (12) Section 171.0122, Health and Safety Code;
- 24 (13) Section 171.0123, Health and Safety Code;
- 25 (14) Section 171.0124, Health and Safety Code;
- 26 (15) Section 171.013, Health and Safety Code;
- 27 (16) Section 171.014, Health and Safety Code;

- 1 (17) Section 171.015, Health and Safety Code;
- 2 (18) Section 171.016, Health and Safety Code;
- 3 (19) Section 171.017, Health and Safety Code;
- 4 (20) Section 171.018, Health and Safety Code;
- 5 (21) Subchapters C, D, F, and G, Chapter 171, Health  
6 and Safety Code;
- 7 (22) Section 241.007, Health and Safety Code;
- 8 (23) Section 243.017, Health and Safety Code;
- 9 (24) Section 245.010, Health and Safety Code;
- 10 (25) Section 245.011(f) and (g), Health and Safety  
11 Code;
- 12 (26) Section 245.0116, Health and Safety Code;
- 13 (27) Section 245.024, Health and Safety Code;
- 14 (28) Chapter 697, Health and Safety Code;
- 15 (29) Section 32.024(c-1), Human Resources Code;
- 16 (30) Chapter 1218, Insurance Code;
- 17 (31) Chapter 1696, Insurance Code;
- 18 (32) Subtitle M, Title 8, Insurance Code;
- 19 (33) Chapter 103, Occupations Code;
- 20 (34) Section 111.005(c), Occupations Code; and
- 21 (35) Section 164.0551, Occupations Code.

22 SECTION 3. Section 32.003(a), Family Code, is amended to  
23 read as follows:

24 (a) A child may consent to medical, dental, psychological,  
25 and surgical treatment for the child by a licensed physician or  
26 dentist if the child:

27 (1) is on active duty with the armed services of the

1 United States of America;

2 (2) is:

3 (A) 16 years of age or older and resides separate  
4 and apart from the child's parents, managing conservator, or  
5 guardian, with or without the consent of the parents, managing  
6 conservator, or guardian and regardless of the duration of the  
7 residence; and

8 (B) managing the child's own financial affairs,  
9 regardless of the source of the income;

10 (3) consents to the diagnosis and treatment of an  
11 infectious, contagious, or communicable disease that is required by  
12 law or a rule to be reported by the licensed physician or dentist to  
13 a local health officer or the Texas Department of Health, including  
14 all diseases within the scope of Section 81.041, Health and Safety  
15 Code;

16 (4) is unmarried and pregnant and consents to  
17 hospital, medical, or surgical treatment[~~, other than abortion,~~]  
18 related to the pregnancy;

19 (5) consents to examination and treatment for drug or  
20 chemical addiction, drug or chemical dependency, or any other  
21 condition directly related to drug or chemical use;

22 (6) is unmarried, is the parent of a child, and has  
23 actual custody of his or her child and consents to medical, dental,  
24 psychological, or surgical treatment for the child; or

25 (7) is serving a term of confinement in a facility  
26 operated by or under contract with the Texas Department of Criminal  
27 Justice[~~, unless the treatment would constitute a prohibited~~

1 ~~practice under Section 164.052(a)(19), Occupations Code].~~

2 SECTION 4. The heading to Section 151.002, Family Code, is  
3 amended to read as follows:

4 Sec. 151.002. RIGHTS OF A LIVING CHILD AFTER AN ABORTION OR  
5 PREMATURE BIRTH[~~, CIVIL PENALTY, CRIMINAL OFFENSE~~].

6 SECTION 5. Section 266.010(a), Family Code, is amended to  
7 read as follows:

8 (a) A foster child who is at least 16 years of age may  
9 consent to the provision of medical care[~~, except as provided by~~  
10 ~~Chapter 33,~~] if the court with continuing jurisdiction determines  
11 that the child has the capacity to consent to medical care. If the  
12 child provides consent by signing a consent form, the form must be  
13 written in language the child can understand.

14 SECTION 6. Section 501.065, Government Code, is amended to  
15 read as follows:

16 Sec. 501.065. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL,  
17 AND SURGICAL TREATMENT. An inmate who is younger than 18 years of  
18 age and is confined in a facility operated by or under contract with  
19 the department may, in accordance with procedures established by  
20 the department, consent to medical, dental, psychological, and  
21 surgical treatment for the inmate by a licensed health care  
22 practitioner, or a person under the direction of a licensed health  
23 care practitioner[~~, unless the treatment would constitute a~~  
24 ~~prohibited practice under Section 164.052(a)(19), Occupations~~  
25 ~~Code~~].

26 SECTION 7. Section 2272.002(b), Government Code, as added  
27 by Chapter 501 (S.B. 22), Acts of the 86th Legislature, Regular

1 Session, 2019, is amended to read as follows:

2 (b) For purposes of this chapter, a facility is not  
3 considered to be an abortion provider solely based on the  
4 performance of an abortion at the facility during a medical  
5 emergency [~~as defined by Section 171.002, Health and Safety Code~~].  
6 In this subsection, "medical emergency" means a life-threatening  
7 physical condition aggravated by, caused by, or arising from a  
8 pregnancy that, as certified by a physician, places the woman in  
9 danger of death or a serious risk of substantial impairment of a  
10 major bodily function unless an abortion is performed.

11 SECTION 8. Section 171.003, Health and Safety Code, is  
12 amended to read as follows:

13 Sec. 171.003. PERSONS AUTHORIZED [~~PHYSICIAN~~] TO PERFORM OR  
14 INDUCE ABORTION. An abortion may be performed or induced only by:

15 (1) a physician licensed to practice medicine in this  
16 state;

17 (2) a nurse licensed under Subtitle E, Title 3,  
18 Occupations Code, who is operating within the nurse's scope of  
19 practice; or

20 (3) a physician assistant licensed under Chapter 204,  
21 Occupations Code, who is operating within the physician assistant's  
22 scope of practice.

23 SECTION 9. Section 245.002, Health and Safety Code, is  
24 amended by amending Subdivision (1) and adding Subdivision (3) to  
25 read as follows:

26 (1) "Abortion" means an act or procedure performed  
27 after pregnancy has been medically verified and with the intent to

1 cause the termination of a pregnancy other than for the purpose of  
2 either the birth of a live fetus or the removal of a dead fetus [~~the~~  
3 ~~act of using or prescribing an instrument, a drug, a medicine, or~~  
4 ~~any other substance, device, or means with the intent to cause the~~  
5 ~~death of an unborn child of a woman known to be pregnant~~]. The term  
6 does not include birth control devices or oral contraceptives. [~~An~~  
7 ~~act is not an abortion if the act is done with the intent to:~~

8 [~~(A) save the life or preserve the health of an~~  
9 ~~unborn child;~~

10 [~~(B) remove a dead, unborn child whose death was~~  
11 ~~caused by spontaneous abortion; or~~

12 [~~(C) remove an ectopic pregnancy.~~]

13 (3) "Commission" means the Health and Human Services  
14 Commission.

15 SECTION 10. Section 245.005(e), Health and Safety Code, is  
16 amended to read as follows:

17 (e) As a condition for renewal of a license, the licensee  
18 must submit to the commission [~~department~~] the annual license  
19 renewal fee and an annual report, including the report required  
20 under Section 245.011.

21 SECTION 11. Section 245.006(a), Health and Safety Code, is  
22 amended to read as follows:

23 (a) The department shall inspect an abortion facility at  
24 random, unannounced, and reasonable times as necessary to ensure  
25 compliance with this chapter and Section 171.011 [~~7, Subchapter B,~~  
26 ~~Chapter 171, and Chapter 33, Family Code~~].

27 SECTION 12. The heading to Section 245.010, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 245.010. PERSONS AUTHORIZED TO PERFORM OR INDUCE  
3 ABORTION [~~MINIMUM STANDARDS~~].

4 SECTION 13. Section 245.010(b), Health and Safety Code, is  
5 amended to read as follows:

6 (b) Only the following persons may perform or induce an  
7 abortion:

8 (1) a physician as defined by Subtitle B, Title 3,  
9 Occupations Code;

10 (2) a nurse licensed under Subtitle E, Title 3,  
11 Occupations Code, who is operating within the nurse's scope of  
12 practice; or

13 (3) a physician assistant licensed under Chapter 204,  
14 Occupations Code, who is operating within the physician assistant's  
15 scope of practice [~~, may perform an abortion~~].

16 SECTION 14. Sections 245.011(a) and (b), Health and Safety  
17 Code, are amended to read as follows:

18 (a) Each [~~A physician who performs an abortion at an~~]  
19 abortion facility must [~~complete and~~] submit a monthly report to  
20 the commission [~~department~~] on each abortion performed [~~by the~~  
21 ~~physician~~] at the abortion facility. The report must be submitted  
22 on a form provided by the commission [~~department~~].

23 (b) The report may not identify by any means the person  
24 performing the abortion or the patient.

25 SECTION 15. Section 164.052(a), Occupations Code, is  
26 amended to read as follows:

27 (a) A physician or an applicant for a license to practice



1 medicine commits a prohibited practice if that person:

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

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

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

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

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

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

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

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

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

27 (10) uses a medical license, certificate, or diploma,

1 or a transcript of a medical license, certificate, or diploma that  
2 has been:

3 (A) fraudulently purchased or issued;

4 (B) counterfeited; or

5 (C) materially altered;

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

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

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

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

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

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

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

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

27 (17) directly or indirectly aids or abets the practice

1 of medicine by a person, partnership, association, or corporation  
2 that is not licensed to practice medicine by the board;

3 (18) performs an abortion on a pregnant patient  
4 ~~[woman]~~ who is pregnant with a viable ~~[unborn child]~~ fetus during  
5 the third trimester of the pregnancy unless:

6 (A) the abortion is necessary to protect the  
7 health or prevent the death of the pregnant patient ~~[woman]~~;

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

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

14 ~~(19) [performs an abortion on an unemancipated minor~~  
15 ~~without the written consent of the child's parent, managing~~  
16 ~~conservator, or legal guardian or without a court order, as~~  
17 ~~provided by Section 33.003 or 33.004, Family Code, unless the~~  
18 ~~abortion is necessary due to a medical emergency, as defined by~~  
19 ~~Section 171.002, Health and Safety Code,~~

20 ~~[(20) otherwise performs an abortion on an~~  
21 ~~unemancipated minor in violation of Chapter 33, Family Code,~~

22 ~~[(21) performs or induces or attempts to perform or~~  
23 ~~induce an abortion in violation of Subchapter C, F, or G, Chapter~~  
24 ~~171, Health and Safety Code, or~~

25 ~~[(22)]~~ in complying with the procedures outlined in  
26 Sections 166.045 and 166.046, Health and Safety Code, wilfully  
27 fails to make a reasonable effort to transfer a patient to a

1 physician who is willing to comply with a directive.

2 SECTION 16. Section 164.055(b), Occupations Code, is  
3 amended to read as follows:

4 (b) The sanctions provided by Subsection (a) are in addition  
5 to any other grounds for refusal to admit persons to examination  
6 under this subtitle or to issue a license or renew a license to  
7 practice medicine under this subtitle. The criminal penalties  
8 provided by Section 165.152 do not apply to a violation of Section  
9 170.002, Health and Safety Code~~[, or Subchapter C, F, or G, Chapter~~  
10 ~~171, Health and Safety Code]~~.

11 SECTION 17. The changes in law made by this Act apply only  
12 to an abortion performed or induced on or after the effective date  
13 of this Act. An abortion performed or induced before the effective  
14 date of this Act is governed by the law applicable to the abortion  
15 immediately before the effective date of this Act, and that law is  
16 continued in effect for that purpose.

17 SECTION 18. This Act takes effect September 1, 2021.