

1-1 By: Hancock S.B. No. 1173
 1-2 (In the Senate - Filed March 8, 2021; March 11, 2021, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 March 18, 2021, reported favorably by the following vote: Yeas 7,
 1-5 Nays 2; March 18, 2021, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | X | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | | X | | |
| 1-15 | X | | | |
| 1-16 | | X | | |

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the regulation of abortion, including information
 1-20 regarding perinatal palliative care and prohibiting discriminatory
 1-21 abortions; authorizing disciplinary action; providing a civil
 1-22 remedy; creating a criminal offense.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. This Act may be cited as the Preborn
 1-25 Nondiscrimination Act.

1-26 SECTION 2. The legislature finds that:

1-27 (1) Texas has a compelling state interest in
 1-28 protecting all Texans from discrimination based on sex, race, and
 1-29 disability; and

1-30 (2) Texas enforces prohibitions against
 1-31 discrimination based on sex, race, and disability in various areas,
 1-32 including housing, employment, education, insurance, and health
 1-33 program and service provision.

1-34 SECTION 3. Chapter 161, Health and Safety Code, is amended
 1-35 by adding Subchapter X to read as follows:

1-36 SUBCHAPTER X. PERINATAL PALLIATIVE CARE

1-37 Sec. 161.701. PURPOSE OF SUBCHAPTER. The purpose of this
 1-38 subchapter is to ensure that a pregnant woman who receives a
 1-39 diagnosis of a life-threatening disability of the woman's preborn
 1-40 child is informed of the availability of perinatal palliative care.

1-41 Sec. 161.702. DEFINITION. In this subchapter, "perinatal
 1-42 palliative care" means the provision of comprehensive, supportive
 1-43 care to reduce the suffering of a pregnant woman, her preborn child,
 1-44 and her family, from diagnosis of the preborn child's
 1-45 life-threatening disability through the delivery and possible
 1-46 death of the child as a result of the life-threatening disability.
 1-47 The term includes medical, social, and mental health care,
 1-48 including counseling and health care provided by maternal-fetal
 1-49 medical specialists, obstetricians, neonatologists, anesthesia
 1-50 specialists, specialty nurses, clergy, social workers, and other
 1-51 individuals focused on alleviating fear and pain and ensuring the
 1-52 pregnant woman, her preborn child, and her family experience a
 1-53 supportive environment.

1-54 Sec. 161.703. PERINATAL PALLIATIVE CARE INFORMATIONAL
 1-55 MATERIALS. (a) The commission shall develop perinatal palliative
 1-56 care informational materials and post the materials on the
 1-57 commission's Internet website. The materials must include:

1-58 (1) a description of the health care and other
 1-59 services available through perinatal palliative care; and

1-60 (2) information about medical assistance benefits
 1-61 that may be available for prenatal care, childbirth, and perinatal

2-1 palliative care.

2-2 (b) The commission shall develop, regularly update, and
 2-3 publish a geographically indexed list of all perinatal palliative
 2-4 care providers and programs in this state. The commission may
 2-5 include perinatal palliative care providers and programs in other
 2-6 states that provide care to residents of this state but may not
 2-7 include an abortion provider, as defined by Section 171.002, or an
 2-8 affiliate, as defined by Section 2272.001, Government Code, as
 2-9 added by Chapter 501 (S.B. 22), Acts of the 86th Legislature,
 2-10 Regular Session, 2019, of an abortion provider. The commission
 2-11 shall post the list of perinatal palliative care providers and
 2-12 programs, including contact information, on the commission's
 2-13 Internet website and note the providers and programs that provide
 2-14 services free of charge.

2-15 Sec. 161.704. PERINATAL PALLIATIVE CARE CERTIFICATION
 2-16 FORM. The commission shall develop a form on which a pregnant woman
 2-17 certifies that she has received the perinatal palliative care
 2-18 informational materials and list of the perinatal palliative care
 2-19 providers and programs described by Section 161.703.

2-20 Sec. 161.705. HEALTH CARE PROVIDER DUTIES ON DIAGNOSIS OF
 2-21 PREBORN CHILD'S LIFE-THREATENING DISABILITY. A health care
 2-22 provider who diagnoses a pregnant woman's preborn child as having a
 2-23 life-threatening disability shall, at the time of the diagnosis:

2-24 (1) provide the pregnant woman with a written copy of:

2-25 (A) the perinatal palliative care informational
 2-26 materials and list of the perinatal palliative care providers and
 2-27 programs described by Section 161.703; and

2-28 (B) the perinatal palliative care certification
 2-29 form described by Section 161.704; and

2-30 (2) obtain from the pregnant woman the signed
 2-31 perinatal palliative care certification form and place the form in
 2-32 the pregnant woman's medical records.

2-33 Sec. 161.706. EXCEPTION. A health care provider is not
 2-34 required to provide the perinatal palliative care informational
 2-35 materials or perinatal palliative care certification form under
 2-36 this subchapter if the health care provider verifies the pregnant
 2-37 woman's medical record contains a signed perinatal palliative care
 2-38 certification form for that pregnancy as required under Section
 2-39 161.705(2).

2-40 SECTION 4. Chapter 170, Health and Safety Code, is amended
 2-41 by designating Sections 170.001 and 170.002 as Subchapter A and
 2-42 adding a subchapter heading to read as follows:

2-43 SUBCHAPTER A. GENERAL PROVISIONS; THIRD TRIMESTER
 2-44 ABORTION PROHIBITED

2-45 SECTION 5. Section 170.001, Health and Safety Code, is
 2-46 amended by adding Subdivision (2-a) to read as follows:

2-47 (2-a) "Preborn child" means an unborn child as defined
 2-48 by Section 171.061.

2-49 SECTION 6. Section 170.002, Health and Safety Code, is
 2-50 amended to read as follows:

2-51 Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as
 2-52 provided by Subsection (b), a person may not intentionally or
 2-53 knowingly perform an abortion on a woman who is pregnant with a
 2-54 preborn ~~viable unborn~~ child during the third trimester of the
 2-55 pregnancy.

2-56 (b) Subsection (a) does not prohibit a person from
 2-57 performing an abortion if at the time of the abortion the person is
 2-58 a physician and concludes in good faith according to the
 2-59 physician's best medical judgment that [+

2-60 ~~(1) the fetus is not a viable fetus and the pregnancy~~
 2-61 ~~is not in the third trimester,~~

2-62 ~~(2) the abortion is necessary due to a medical~~
 2-63 ~~emergency, as defined by Section 171.002 [to prevent the death or a~~
 2-64 ~~substantial risk of serious impairment to the physical or mental~~
 2-65 ~~health of the woman; or~~

2-66 ~~(3) the fetus has a severe and irreversible~~
 2-67 ~~abnormality, identified by reliable diagnostic procedures].~~

2-68 (c) A physician who performs an abortion that, according to
 2-69 the physician's best medical judgment at the time of the abortion,

3-1 is to abort a preborn [~~viable unborn~~] child during the third
3-2 trimester of the pregnancy shall certify in writing to the
3-3 commission, on a form prescribed by the commission, the medical
3-4 indications supporting the physician's judgment that the abortion
3-5 was authorized by Subsection (b) [~~(b)(2) or (3)~~]. ~~If the physician~~
3-6 ~~certifies the abortion was authorized by Subsection (b)(3), the~~
3-7 ~~physician shall certify in writing on the form the fetal~~
3-8 ~~abnormality identified by the physician].~~ The certification must
3-9 be made not later than the 30th day after the date the abortion was
3-10 performed.

3-11 SECTION 7. Chapter 170, Health and Safety Code, is amended
3-12 by adding Subchapter B to read as follows:

3-13 SUBCHAPTER B. DISCRIMINATORY ABORTION PROHIBITED

3-14 Sec. 170.051. DEFINITION. In this subchapter, "disability"
3-15 means:

3-16 (1) a physical or mental impairment that would
3-17 substantially limit one or more of an individual's major life
3-18 activities;

3-19 (2) an assessment referencing an individual's
3-20 impairment described by Subdivision (1); or

3-21 (3) a physical disfigurement, scoliosis, dwarfism,
3-22 Down syndrome, albinism, amelia, or any other type of physical,
3-23 mental, or intellectual abnormality or disease.

3-24 Sec. 170.052. DISCRIMINATORY ABORTION PROHIBITED. A person
3-25 may not:

3-26 (1) knowingly perform or attempt to perform on a
3-27 pregnant woman an abortion based on the race, ethnicity, sex, or
3-28 disability of the woman's preborn child, including a probability of
3-29 diagnosis that the child has a disability; or

3-30 (2) use force or the threat of force to intentionally
3-31 injure or intimidate a person to coerce the performance or
3-32 attempted performance of an abortion based on the race, ethnicity,
3-33 sex, or disability of the woman's preborn child, including a
3-34 probability of diagnosis that the child has a disability.

3-35 Sec. 170.053. CRIMINAL PENALTY. (a) A person who violates
3-36 Section 170.052 commits an offense. An offense under this
3-37 subsection is a Class A misdemeanor.

3-38 (b) A woman on whom an abortion is performed or attempted in
3-39 violation of Section 170.052 may not be prosecuted for a violation
3-40 of that section or for conspiracy to commit a violation of that
3-41 section.

3-42 Sec. 170.054. LICENSE SUSPENSION OR REVOCATION. A
3-43 physician who violates Section 170.052 engages in unprofessional
3-44 conduct for which the physician's license may be suspended or
3-45 revoked under Chapter 164, Occupations Code.

3-46 Sec. 170.055. CIVIL REMEDIES. (a) A civil action may be
3-47 brought against a person who violates Section 170.052 by:

3-48 (1) the woman on whom an abortion was performed or
3-49 attempted in violation of Section 170.052;

3-50 (2) the father of the preborn child for an abortion
3-51 performed or attempted on a pregnant woman in violation of Section
3-52 170.052, unless the woman's pregnancy resulted from the father's
3-53 criminal conduct; or

3-54 (3) a maternal grandparent of the preborn child for an
3-55 abortion performed or attempted in violation of Section 170.052 on
3-56 a pregnant woman who was less than 18 years of age at the time of the
3-57 violation, unless the woman's pregnancy resulted from the maternal
3-58 grandparent's criminal conduct.

3-59 (b) A person who brings an action under this section may
3-60 obtain:

3-61 (1) injunctive relief;
3-62 (2) damages incurred by the person, including:

3-63 (A) actual damages for all psychological,
3-64 emotional, and physical injuries resulting from the violation of
3-65 Section 170.052;

3-66 (B) court costs; and
3-67 (C) reasonable attorney's fees; or

3-68 (3) both injunctive relief and damages.
3-69 (c) An action for damages or injunctive relief under this

4-1 section must be filed:

4-2 (1) in a district court in the county in which the
4-3 woman on whom an abortion was performed or attempted in violation of
4-4 Section 170.052 resides; and

4-5 (2) not later than the sixth anniversary of the date
4-6 the abortion was performed or attempted in violation of Section
4-7 170.052.

4-8 (d) The damages and injunctive relief authorized by this
4-9 section are in addition to any other remedy available by law.

4-10 (e) A civil action under this section may not be brought
4-11 against a woman on whom an abortion is performed or attempted in
4-12 violation of Section 170.052.

4-13 SECTION 8. Section 171.002, Health and Safety Code, is
4-14 amended by adding Subdivision (3-a) to read as follows:

4-15 (3-a) "Preborn child" means an unborn child as defined
4-16 by Section 171.061.

4-17 SECTION 9. Section 171.012, Health and Safety Code, is
4-18 amended by amending Subsection (a) and adding Subsections (g) and
4-19 (h) to read as follows:

4-20 (a) Consent to an abortion is voluntary and informed only
4-21 if:

4-22 (1) the physician who is to perform the abortion
4-23 informs the pregnant woman on whom the abortion is to be performed
4-24 of:

4-25 (A) the physician's name;

4-26 (B) the particular medical risks associated with
4-27 the particular abortion procedure to be employed, including, when
4-28 medically accurate:

4-29 (i) the risks of infection and hemorrhage;

4-30 (ii) the potential danger to a subsequent
4-31 pregnancy and of infertility; and

4-32 (iii) the possibility of increased risk of
4-33 breast cancer following an induced abortion and the natural
4-34 protective effect of a completed pregnancy in avoiding breast
4-35 cancer;

4-36 (C) the probable gestational age of the preborn
4-37 [unborn] child at the time the abortion is to be performed; [and]

4-38 (D) the medical risks associated with carrying
4-39 the preborn child to term; and

4-40 (E) the state law prohibiting abortion of a
4-41 preborn child solely on the basis of the preborn child's race,
4-42 ethnicity, sex, or disability as defined by Section 170.051,
4-43 including a probability of diagnosis that the child has a
4-44 disability;

4-45 (2) the physician who is to perform the abortion or the
4-46 physician's agent informs the pregnant woman that:

4-47 (A) medical assistance benefits may be available
4-48 for prenatal care, childbirth, and neonatal care;

4-49 (B) the father is liable for assistance in the
4-50 support of the child without regard to whether the father has
4-51 offered to pay for the abortion; and

4-52 (C) public and private agencies provide
4-53 pregnancy prevention counseling and medical referrals for
4-54 obtaining pregnancy prevention medications or devices, including
4-55 emergency contraception for victims of rape or incest;

4-56 (3) the physician who is to perform the abortion or the
4-57 physician's agent:

4-58 (A) provides the pregnant woman with the printed
4-59 materials described by Section 171.014; and

4-60 (B) informs the pregnant woman that those
4-61 materials:

4-62 (i) have been provided by the Health and
4-63 Human Services Commission [Department of State Health Services];

4-64 (ii) are accessible on an Internet website
4-65 sponsored by the commission [department];

4-66 (iii) describe the preborn [unborn] child
4-67 and list agencies that offer alternatives to abortion; and

4-68 (iv) include a list of agencies that offer
4-69 sonogram services at no cost to the pregnant woman;

5-1 (4) before any sedative or anesthesia is administered
5-2 to the pregnant woman and at least 24 hours before the abortion or
5-3 at least two hours before the abortion if the pregnant woman waives
5-4 this requirement by certifying that she currently lives 100 miles
5-5 or more from the nearest abortion provider that is a facility
5-6 licensed under Chapter 245 or a facility that performs more than 50
5-7 abortions in any 12-month period:

5-8 (A) the physician who is to perform the abortion
5-9 or an agent of the physician who is also a sonographer certified by
5-10 a national registry of medical sonographers performs a sonogram on
5-11 the pregnant woman on whom the abortion is to be performed;

5-12 (B) the physician who is to perform the abortion
5-13 displays the sonogram images in a quality consistent with current
5-14 medical practice in a manner that the pregnant woman may view them;

5-15 (C) the physician who is to perform the abortion
5-16 provides, in a manner understandable to a layperson, a verbal
5-17 explanation of the results of the sonogram images, including a
5-18 medical description of the dimensions of the embryo or fetus, the
5-19 presence of cardiac activity, and the presence of external members
5-20 and internal organs; and

5-21 (D) the physician who is to perform the abortion
5-22 or an agent of the physician who is also a sonographer certified by
5-23 a national registry of medical sonographers makes audible the heart
5-24 auscultation for the pregnant woman to hear, if present, in a
5-25 quality consistent with current medical practice and provides, in a
5-26 manner understandable to a layperson, a simultaneous verbal
5-27 explanation of the heart auscultation;

5-28 (5) before receiving a sonogram under Subdivision
5-29 (4)(A) and before the abortion is performed and before any sedative
5-30 or anesthesia is administered, the pregnant woman completes and
5-31 certifies with her signature an election form that states as
5-32 follows:

5-33 "ABORTION AND SONOGRAM ELECTION

5-34 (1) THE INFORMATION AND PRINTED MATERIALS
5-35 DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH
5-36 AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO
5-37 ME.

5-38 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF
5-39 AN ABORTION.

5-40 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM
5-41 PRIOR TO RECEIVING AN ABORTION.

5-42 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW
5-43 THE SONOGRAM IMAGES.

5-44 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR
5-45 THE HEARTBEAT.

5-46 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO
5-47 HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I
5-48 CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

5-49 I AM PREGNANT AS A RESULT OF A SEXUAL
5-50 ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL
5-51 CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT
5-52 AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I
5-53 REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK
5-54 OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

5-55 I AM A MINOR AND OBTAINING AN ABORTION IN
5-56 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER
5-57 CHAPTER 33, TEXAS FAMILY CODE.

5-58 ~~[MY FETUS HAS AN IRREVERSIBLE MEDICAL~~
5-59 ~~CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE~~
5-60 ~~DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL~~
5-61 ~~FILE.]~~

5-62 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL
5-63 AND WITHOUT COERCION.

5-64 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM
5-65 THE NEAREST ABORTION PROVIDER THAT IS A FACILITY
5-66 LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY
5-67 CODE, OR A FACILITY THAT PERFORMS MORE THAN 50
5-68 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

5-69 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100

6-1 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT
 6-2 IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH
 6-3 AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN
 6-4 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE
 6-5 REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS
 6-6 PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY
 6-7 PLACE OF RESIDENCE IS: _____.

6-8 _____
 6-9 SIGNATURE DATE";

6-10 (6) before the abortion is performed, the physician
 6-11 who is to perform the abortion receives a copy of the signed,
 6-12 written certification required by Subdivision (5); and

6-13 (7) the pregnant woman is provided the name of each
 6-14 person who provides or explains the information required under this
 6-15 subsection.

6-16 (g) If the pregnant woman's preborn child has been diagnosed
 6-17 with a life-threatening disability, the physician who is to perform
 6-18 the abortion shall, at least 24 hours before the abortion or at
 6-19 least two hours before the abortion if the pregnant woman waives
 6-20 this requirement by certifying that she currently lives 100 miles
 6-21 or more from the nearest abortion provider that is a facility
 6-22 licensed under Chapter 245 or a facility in which more than 50
 6-23 abortions are performed in any 12-month period:

6-24 (1) orally and in person, inform the pregnant woman of
 6-25 the availability of perinatal palliative care, as that term is
 6-26 defined by Section 161.702; and

6-27 (2) provide the pregnant woman with a written copy of:
 6-28 (A) the perinatal palliative care informational
 6-29 materials and list of the perinatal palliative care providers and
 6-30 programs described by Section 161.703; and

6-31 (B) the perinatal palliative care certification
 6-32 form described by Section 161.704.

6-33 (h) If a pregnant woman described by Subsection (g), after
 6-34 receiving from the physician who is to perform the abortion the
 6-35 perinatal palliative care informational materials and
 6-36 certification form described by that subsection in the manner
 6-37 required by that subsection, chooses to have an abortion instead of
 6-38 continuing the pregnancy in perinatal palliative care, the
 6-39 physician may perform the abortion only after:

6-40 (1) the pregnant woman signs the certification form;
 6-41 and

6-42 (2) the physician places the signed certification form
 6-43 in the pregnant woman's medical records.

6-44 SECTION 10. Section 171.0121, Health and Safety Code, is
 6-45 amended to read as follows:

6-46 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion
 6-47 begins, a copy of the signed, written certification received by the
 6-48 physician under Section 171.012(a)(6) and, if applicable, under
 6-49 Section 161.704 must be placed in the pregnant woman's medical
 6-50 records.

6-51 (b) A copy of the signed, written certification required
 6-52 under Sections 171.012(a)(5) and (6) and of any signed, written
 6-53 certification required under Section 161.704 shall be retained by
 6-54 the facility where the abortion is performed until:

6-55 (1) the seventh anniversary of the date the
 6-56 certification ~~is~~ is signed; or

6-57 (2) if the pregnant woman is a minor, the later of:
 6-58 (A) the seventh anniversary of the date the
 6-59 certification ~~is~~ is signed; or

6-60 (B) the woman's 21st birthday.

6-61 SECTION 11. Section 171.0122(d), Health and Safety Code, is
 6-62 amended to read as follows:

6-63 (d) A pregnant woman may choose not to receive the verbal
 6-64 explanation of the results of the sonogram images under Section
 6-65 171.012(a)(4)(C) if:

6-66 (1) the woman's pregnancy is a result of a sexual
 6-67 assault, incest, or other violation of the Penal Code that has been
 6-68 reported to law enforcement authorities or that has not been
 6-69 reported because she has a reason that she declines to reveal

7-1 because she reasonably believes that to do so would put her at risk
7-2 of retaliation resulting in serious bodily injury; or

7-3 (2) the woman is a minor and obtaining an abortion in
7-4 accordance with judicial bypass procedures under Chapter 33, Family
7-5 Code[~~, or~~

7-6 [~~(3) the fetus has an irreversible medical condition~~
7-7 ~~or abnormality, as previously identified by reliable diagnostic~~
7-8 ~~procedures and documented in the woman's medical file].~~

7-9 SECTION 12. Section 171.014(a), Health and Safety Code, is
7-10 amended to read as follows:

7-11 (a) The department shall publish informational materials
7-12 that include:

7-13 (1) the information required to be provided under
7-14 Sections 171.012(a)(1)(B), ~~[and]~~ (D), and (E) and (a)(2)(A), (B),
7-15 and (C); and

7-16 (2) the materials required by Sections 161.703,
7-17 171.015, and 171.016.

7-18 SECTION 13. Section 171.042, Health and Safety Code, is
7-19 amended to read as follows:

7-20 Sec. 171.042. DEFINITION [~~DEFINITIONS~~]. In this
7-21 subchapter, ~~[+~~

7-22 [~~(1)~~] "post-fertilization [~~Post-fertilization~~] age"
7-23 means the age of the preborn [~~unborn~~] child as calculated from the
7-24 fusion of a human spermatozoon with a human ovum.

7-25 [~~(2) "Severe fetal abnormality" has the meaning~~
7-26 ~~assigned by Section 285.202.~~]

7-27 SECTION 14. Sections 171.043, 171.044, and 171.045, Health
7-28 and Safety Code, are amended to read as follows:

7-29 Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE
7-30 REQUIRED. Except as otherwise provided by Section 171.046, a
7-31 physician may not perform or induce or attempt to perform or induce
7-32 an abortion without, prior to the procedure:

7-33 (1) making a determination of the probable
7-34 post-fertilization age of the preborn [~~unborn~~] child; or

7-35 (2) possessing and relying on a determination of the
7-36 probable post-fertilization age of the preborn [~~unborn~~] child made
7-37 by another physician.

7-38 Sec. 171.044. ABORTION OF PREBORN [~~UNBORN~~] CHILD OF 20 OR
7-39 MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise
7-40 provided by Section 171.046, a person may not perform or induce or
7-41 attempt to perform or induce an abortion on a woman if it has been
7-42 determined, by the physician performing, inducing, or attempting to
7-43 perform or induce the abortion or by another physician on whose
7-44 determination that physician relies, that the probable
7-45 post-fertilization age of the preborn [~~unborn~~] child is 20 or more
7-46 weeks.

7-47 Sec. 171.045. METHOD OF ABORTION. (a) This section applies
7-48 only to an abortion authorized under Section 171.046(a)(1) or (2)
7-49 in which:

7-50 (1) the probable post-fertilization age of the preborn
7-51 [~~unborn~~] child is 20 or more weeks; or

7-52 (2) the probable post-fertilization age of the preborn
7-53 [~~unborn~~] child has not been determined but could reasonably be 20 or
7-54 more weeks.

7-55 (b) Except as otherwise provided by Section 171.046(a)(3),
7-56 a physician performing an abortion under Subsection (a) shall
7-57 terminate the pregnancy in the manner that, in the physician's
7-58 reasonable medical judgment, provides the best opportunity for the
7-59 preborn [~~unborn~~] child to survive.

7-60 SECTION 15. Section 171.046(a), Health and Safety Code, is
7-61 amended to read as follows:

7-62 (a) The prohibitions and requirements under Sections
7-63 171.043, 171.044, and 171.045(b) do not apply to an abortion
7-64 performed if there exists a condition that, in the physician's
7-65 reasonable medical judgment, so complicates the medical condition
7-66 of the woman that, to avert the woman's death or a serious risk of
7-67 substantial and irreversible physical impairment of a major bodily
7-68 function, other than a psychological condition, it necessitates, as
7-69 applicable:

8-1 (1) the immediate abortion of her pregnancy without
8-2 the delay necessary to determine the probable post-fertilization
8-3 age of the preborn ~~[unborn]~~ child;

8-4 (2) the abortion of her pregnancy even though the
8-5 post-fertilization age of the preborn ~~[unborn]~~ child is 20 or more
8-6 weeks; or

8-7 (3) the use of a method of abortion other than a method
8-8 described by Section 171.045(b).

8-9 SECTION 16. Section 285.202(a), Health and Safety Code, is
8-10 amended to read as follows:

8-11 (a) In this section, "medical emergency" means[+
8-12 ~~[(1)]~~ a condition exists that, in a physician's good
8-13 faith clinical judgment, complicates the medical condition of the
8-14 pregnant woman and necessitates the immediate abortion of her
8-15 pregnancy to avert her death or to avoid a serious risk of
8-16 substantial impairment of a major bodily function[~~, or~~
8-17 ~~[(2) the fetus has a severe fetal abnormality]~~.

8-18 SECTION 17. Section 164.052(a), Occupations Code, is
8-19 amended to read as follows:

8-20 (a) A physician or an applicant for a license to practice
8-21 medicine commits a prohibited practice if that person:

8-22 (1) submits to the board a false or misleading
8-23 statement, document, or certificate in an application for a
8-24 license;

8-25 (2) presents to the board a license, certificate, or
8-26 diploma that was illegally or fraudulently obtained;

8-27 (3) commits fraud or deception in taking or passing an
8-28 examination;

8-29 (4) uses alcohol or drugs in an intemperate manner
8-30 that, in the board's opinion, could endanger a patient's life;

8-31 (5) commits unprofessional or dishonorable conduct
8-32 that is likely to deceive or defraud the public, as provided by
8-33 Section 164.053, or injure the public;

8-34 (6) uses an advertising statement that is false,
8-35 misleading, or deceptive;

8-36 (7) advertises professional superiority or the
8-37 performance of professional service in a superior manner if that
8-38 advertising is not readily subject to verification;

8-39 (8) purchases, sells, barter, or uses, or offers to
8-40 purchase, sell, barter, or use, a medical degree, license,
8-41 certificate, or diploma, or a transcript of a license, certificate,
8-42 or diploma in or incident to an application to the board for a
8-43 license to practice medicine;

8-44 (9) alters, with fraudulent intent, a medical license,
8-45 certificate, or diploma, or a transcript of a medical license,
8-46 certificate, or diploma;

8-47 (10) uses a medical license, certificate, or diploma,
8-48 or a transcript of a medical license, certificate, or diploma that
8-49 has been:

8-50 (A) fraudulently purchased or issued;

8-51 (B) counterfeited; or

8-52 (C) materially altered;

8-53 (11) impersonates or acts as proxy for another person
8-54 in an examination required by this subtitle for a medical license;

8-55 (12) engages in conduct that subverts or attempts to
8-56 subvert an examination process required by this subtitle for a
8-57 medical license;

8-58 (13) impersonates a physician or permits another to
8-59 use the person's license or certificate to practice medicine in
8-60 this state;

8-61 (14) directly or indirectly employs a person whose
8-62 license to practice medicine has been suspended, canceled, or
8-63 revoked;

8-64 (15) associates in the practice of medicine with a
8-65 person:

8-66 (A) whose license to practice medicine has been
8-67 suspended, canceled, or revoked; or

8-68 (B) who has been convicted of the unlawful
8-69 practice of medicine in this state or elsewhere;

9-1 (16) performs or procures a criminal abortion, aids or
 9-2 abets in the procuring of a criminal abortion, attempts to perform
 9-3 or procure a criminal abortion, or attempts to aid or abet the
 9-4 performance or procurement of a criminal abortion;

9-5 (17) directly or indirectly aids or abets the practice
 9-6 of medicine by a person, partnership, association, or corporation
 9-7 that is not licensed to practice medicine by the board;

9-8 (18) performs an abortion on a woman who is pregnant
 9-9 with a preborn [~~viable unborn~~] child during the third trimester of
 9-10 the pregnancy unless[+]

9-11 [~~(A)~~] the abortion is necessary due to a medical
 9-12 emergency, as defined by Section 171.002, Health and Safety Code
 9-13 [~~to prevent the death of the woman;~~

9-14 [~~(B) the viable unborn child has a severe,~~
 9-15 ~~irreversible brain impairment; or~~

9-16 [~~(C) the woman is diagnosed with a significant~~
 9-17 ~~likelihood of suffering imminent severe, irreversible brain damage~~
 9-18 ~~or imminent severe, irreversible paralysis];~~

9-19 (19) performs an abortion on an unemancipated minor
 9-20 without the written consent of the child's parent, managing
 9-21 conservator, or legal guardian or without a court order, as
 9-22 provided by Section 33.003 or 33.004, Family Code, unless the
 9-23 abortion is necessary due to a medical emergency, as defined by
 9-24 Section 171.002, Health and Safety Code;

9-25 (20) otherwise performs an abortion on an
 9-26 unemancipated minor in violation of Chapter 33, Family Code;

9-27 (21) performs or induces or attempts to perform or
 9-28 induce an abortion in violation of Subchapter C, F, or G, Chapter
 9-29 171, Health and Safety Code; [~~or~~]

9-30 (22) in complying with the procedures outlined in
 9-31 Sections 166.045 and 166.046, Health and Safety Code, wilfully
 9-32 fails to make a reasonable effort to transfer a patient to a
 9-33 physician who is willing to comply with a directive; or

9-34 (23) performs or attempts to perform an abortion or
 9-35 engages in other conduct in violation of Section 170.052, Health
 9-36 and Safety Code.

9-37 SECTION 18. Section 164.055(b), Occupations Code, is
 9-38 amended to read as follows:

9-39 (b) The sanctions provided by Subsection (a) are in addition
 9-40 to any other grounds for refusal to admit persons to examination
 9-41 under this subtitle or to issue a license or renew a license to
 9-42 practice medicine under this subtitle. The criminal penalties
 9-43 provided by Section 165.152 do not apply to a violation of Section
 9-44 170.002 or 170.052, Health and Safety Code, or Subchapter C, F, or
 9-45 G, Chapter 171, Health and Safety Code.

9-46 SECTION 19. The following provisions of the Health and
 9-47 Safety Code are repealed:

9-48 (1) Section 171.046(c); and

9-49 (2) Sections 285.202(a-1) and (a-2).

9-50 SECTION 20. Not later than December 1, 2021:

9-51 (1) the Health and Human Services Commission shall:

9-52 (A) develop the perinatal palliative care
 9-53 informational materials, list of perinatal palliative care
 9-54 providers and programs, and perinatal palliative care
 9-55 certification form required by Subchapter X, Chapter 161, Health
 9-56 and Safety Code, as added by this Act; and

9-57 (B) update any forms and informational materials
 9-58 under Subchapter B, Chapter 171, Health and Safety Code, as amended
 9-59 by this Act; and

9-60 (2) the executive commissioner of the Health and Human
 9-61 Services Commission shall adopt any rules necessary to implement
 9-62 Subchapter X, Chapter 161, Health and Safety Code, as added by this
 9-63 Act, and Subchapter B, Chapter 171, Health and Safety Code, as
 9-64 amended by this Act.

9-65 SECTION 21. (a) Subchapter X, Chapter 161, Health and
 9-66 Safety Code, as added by this Act, applies only to a diagnosis of a
 9-67 life-threatening disability of a pregnant woman's preborn child
 9-68 made on or after January 1, 2022.

9-69 (b) Chapter 170, Health and Safety Code, as amended by this

10-1 Act, Subchapters B and C, Chapter 171, Health and Safety Code, as
10-2 amended by this Act, and Chapter 164, Occupations Code, as amended
10-3 by this Act, apply only to an abortion performed, induced, or
10-4 attempted or other conduct that occurred on or after January 1,
10-5 2022. An abortion performed, induced, or attempted or other
10-6 conduct that occurred before that date is governed by the law in
10-7 effect immediately before the effective date of this Act, and that
10-8 law is continued in effect for that purpose.

10-9 SECTION 22. It is the intent of the legislature that every
10-10 provision, section, subsection, sentence, clause, phrase, or word
10-11 of this Act and every application of the provisions of this Act to
10-12 each person or entity are severable from each other. If a court for
10-13 any reason finds any application of any provision of this Act to any
10-14 person, group of persons, or circumstances to be invalid, the
10-15 remaining applications of that provision to all other persons and
10-16 circumstances shall be severed and may not be affected.

10-17 SECTION 23. This Act takes effect September 1, 2021.

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