

By: Perry, et al.  
(Oliverson, Klick, Price, Schaefer, et al.)

S.B. No. 1647

Substitute the following for S.B. No. 1647:

By: Klick

C.S.S.B. No. 1647

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to information regarding perinatal palliative care,  
3 regulation of abortion, and the availability of certain defenses to  
4 prosecution for homicide and assault offenses; creating a criminal  
5 offense.

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

7 ARTICLE 1. LEGISLATIVE FINDINGS

8 SECTION 1.01. 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;

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; and

16 (3) Texas never repealed, either expressly or by  
17 implication, the state statutes enacted before the ruling in *Roe v.*  
18 *Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion  
19 unless the mother's life is in danger.

20 ARTICLE 2. DISCRIMINATORY ABORTIONS PROHIBITED

21 SECTION 2.01. Chapter 161, Health and Safety Code, is  
22 amended by adding Subchapter X to read as follows:

23 SUBCHAPTER X. PERINATAL PALLIATIVE CARE

24 Sec. 161.701. PURPOSE OF SUBCHAPTER. The purpose of this

1 subchapter is to ensure that a pregnant woman who receives a  
2 diagnosis of a life-threatening disability of the woman's preborn  
3 child is informed of the availability of perinatal palliative care.

4 Sec. 161.702. DEFINITION. In this subchapter, "perinatal  
5 palliative care" means the provision of comprehensive, supportive  
6 care to reduce the suffering of a pregnant woman, her preborn child,  
7 and her family, from diagnosis of the preborn child's  
8 life-threatening disability through the delivery and possible  
9 death of the child as a result of the life-threatening disability.  
10 The term includes medical, social, and mental health care,  
11 including counseling and health care provided by maternal-fetal  
12 medical specialists, obstetricians, neonatologists, anesthesia  
13 specialists, specialty nurses, clergy, social workers, and other  
14 individuals focused on alleviating fear and pain and ensuring the  
15 pregnant woman, her preborn child, and her family experience a  
16 supportive environment.

17 Sec. 161.703. PERINATAL PALLIATIVE CARE INFORMATIONAL  
18 MATERIALS. (a) The commission shall develop perinatal palliative  
19 care informational materials and post the materials on the  
20 commission's Internet website. The materials must include:

21 (1) a description of the health care and other  
22 services available through perinatal palliative care; and

23 (2) information about medical assistance benefits  
24 that may be available for prenatal care, childbirth, and perinatal  
25 palliative care.

26 (b) The commission shall develop, regularly update, and  
27 publish a geographically indexed list of all perinatal palliative

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

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

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

- 21 (1) provide the pregnant woman with a written copy of:  
22 (A) the perinatal palliative care informational  
23 materials and list of the perinatal palliative care providers and  
24 programs described by Section 161.703; and  
25 (B) the perinatal palliative care certification  
26 form described by Section 161.704; and

- 27 (2) obtain from the pregnant woman the signed

1 perinatal palliative care certification form and place the form in  
2 the pregnant woman's medical records.

3 Sec. 161.706. EXCEPTION. A health care provider is not  
4 required to provide the perinatal palliative care informational  
5 materials or perinatal palliative care certification form under  
6 this subchapter if the health care provider verifies the pregnant  
7 woman's medical record contains a signed perinatal palliative care  
8 certification form for that pregnancy as required under Section  
9 161.705(2).

10 SECTION 2.02. Chapter 170, Health and Safety Code, is  
11 amended by designating Sections 170.001 and 170.002 as Subchapter A  
12 and adding a subchapter heading to read as follows:

13 SUBCHAPTER A. GENERAL PROVISIONS; POST-VIABILITY ABORTION

14 PROHIBITED

15 SECTION 2.03. Section 170.001, Health and Safety Code, is  
16 amended by adding Subdivision (2-a) to read as follows:

17 (2-a) "Preborn child" means an unborn child as defined  
18 by Section 171.061.

19 SECTION 2.04. Section 170.002, Health and Safety Code, is  
20 amended to read as follows:

21 Sec. 170.002. PROHIBITED ACTS; EXEMPTION. (a) Except as  
22 provided by Subsection (b), a person may not intentionally or  
23 knowingly perform or induce an abortion on a woman who is pregnant  
24 with a preborn [~~viable unborn~~] child during the third trimester of  
25 the pregnancy.

26 (b) Subsection (a) does not prohibit a person from  
27 performing or inducing an abortion if at the time of the abortion

1 the person is a physician and concludes in good faith according to  
2 the physician's best medical judgment that[+]

3 ~~[(1) the fetus is not a viable fetus and the pregnancy~~  
4 ~~is not in the third trimester,~~

5 [(2)] the abortion is necessary due to a medical  
6 emergency, as defined by Section 171.002 [~~to prevent the death or a~~  
7 ~~substantial risk of serious impairment to the physical or mental~~  
8 ~~health of the woman; or~~

9 [(3) the fetus has a severe and irreversible  
10 abnormality, identified by reliable diagnostic procedures].

11 (c) A physician who performs or induces an abortion that,  
12 according to the physician's best medical judgment at the time of  
13 the abortion, is to abort a preborn [~~viable unborn~~] child during the  
14 third trimester of the pregnancy shall certify in writing to the  
15 commission, on a form prescribed by the commission, the medical  
16 indications supporting the physician's judgment that the abortion  
17 was authorized by Subsection (b) [~~(b)(2) or (3)~~]. ~~If the physician~~  
18 ~~certifies the abortion was authorized by Subsection (b)(3), the~~  
19 ~~physician shall certify in writing on the form the fetal~~  
20 ~~abnormality identified by the physician].~~ The certification must  
21 be made not later than the 30th day after the date the abortion was  
22 performed or induced.

23 SECTION 2.05. Chapter 170, Health and Safety Code, is  
24 amended by adding Subchapter B to read as follows:

25 SUBCHAPTER B. PREBORN NONDISCRIMINATION ACT

26 Sec. 170.051. DEFINITION. In this subchapter, "disability"  
27 means:

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

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

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

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

11           (1) knowingly perform or 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 or  
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 or induced or  
26 attempted to be performed or induced in violation of Section  
27 170.052 may not be prosecuted for a violation of that section or for

1 conspiracy to commit a violation 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 or  
9 induced or attempted to be performed or induced in violation of  
10 Section 170.052;

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

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

21 (b) A person who brings an action under this section may  
22 obtain:

23 (1) injunctive relief;

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

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

1                   (B) court costs; and

2                   (C) reasonable attorney's fees; or

3                   (3) both injunctive relief and damages.

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

6                   (1) in a district court in the county in which the  
7 woman on whom an abortion was performed or induced or attempted to  
8 be performed or induced in violation of Section 170.052 resides;  
9 and

10                   (2) not later than the sixth anniversary of the date  
11 the abortion was performed or induced or attempted to be performed  
12 or induced in violation of Section 170.052.

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

15                   (e) A civil action under this section may not be brought  
16 against a woman on whom an abortion is performed or induced or  
17 attempted to be performed or induced in violation of Section  
18 170.052.

19           SECTION 2.06. Section 171.002, Health and Safety Code, is  
20 amended by adding Subdivision (3-a) to read as follows:

21                   (3-a) "Preborn child" means an unborn child as defined  
22 by Section 171.061.

23           SECTION 2.07. Subchapter A, Chapter 171, Health and Safety  
24 Code, is amended by adding Sections 171.0055 and 171.008 to read as  
25 follows:

26           Sec. 171.0055. REPORT BY ATTORNEY GENERAL. (a) The  
27 attorney general shall certify and submit a written report to the

1 governor and the legislature not later than the 31st day after the  
2 date any of the following occurs:

3 (1) the issuance of a United States Supreme Court  
4 judgment in a decision overruling, wholly or partly, *Roe v. Wade*,  
5 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505  
6 U.S. 833 (1992), thereby allowing the states to prohibit abortion;

7 (2) the issuance of any other United States Supreme  
8 Court judgment in a decision that recognizes, wholly or partly, the  
9 authority of states to prohibit abortion; or

10 (3) the adoption of an amendment to the United States  
11 Constitution that, wholly or partly, restores to the states the  
12 authority to prohibit abortion.

13 (b) The attorney general shall make available a copy of the  
14 report required by Subsection (a) on the attorney general's  
15 Internet website not later than the 31st day after the date the  
16 attorney general submits the report.

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

23 (b) A physician shall:

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

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

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

3           (1) if the abortion is performed or induced to  
4 preserve the health of the pregnant woman, execute a written  
5 document that:

6                   (A) specifies the medical condition the abortion  
7 is asserted to address; and

8                   (B) provides the medical rationale for the  
9 physician's conclusion that the abortion is necessary to address  
10 the medical condition; or

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

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

16       SECTION 2.08. Section [171.012](#), Health and Safety Code, is  
17 amended by amending Subsection (a) and adding Subsections (g) and  
18 (h) to read as follows:

19       (a) Consent to an abortion is voluntary and informed only  
20 if:

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

24                   (A) the physician's name;

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

1 (i) the risks of infection and hemorrhage;  
2 (ii) the potential danger to a subsequent  
3 pregnancy and of infertility; and

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

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

11 (D) the medical risks associated with carrying  
12 the preborn child to term; and

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

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

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

21 (B) the father is liable for assistance in the  
22 support of the child without regard to whether the father has  
23 offered to pay for the abortion; and

24 (C) public and private agencies provide  
25 pregnancy prevention counseling and medical referrals for  
26 obtaining pregnancy prevention medications or devices, including  
27 emergency contraception for victims of rape or incest;

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

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

5           (B) informs the pregnant woman that those  
6 materials:

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

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

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

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

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

22           (A) the physician who is to perform or induce the  
23 abortion or an agent of the physician who is also a sonographer  
24 certified by a national registry of medical sonographers performs a  
25 sonogram on the pregnant woman on whom the abortion is to be  
26 performed or induced;

27           (B) the physician who is to perform or induce the

1 abortion displays the sonogram images in a quality consistent with  
2 current medical practice in a manner that the pregnant woman may  
3 view them;

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

10 (D) 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 makes  
13 audible the heart auscultation for the pregnant woman to hear, if  
14 present, in a quality consistent with current medical practice and  
15 provides, in a manner understandable to a layperson, a simultaneous  
16 verbal explanation of the heart auscultation;

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

22 "ABORTION AND SONOGRAM ELECTION

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

27 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF

1 AN ABORTION.

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

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

6 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR  
7 THE HEARTBEAT.

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

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

17 \_\_\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN  
18 ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER  
19 CHAPTER 33, TEXAS FAMILY CODE.

20 \_\_\_\_\_ MY PREBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE  
21 MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY  
22 RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY  
23 MEDICAL FILE.

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

26 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM  
27 THE NEAREST ABORTION PROVIDER THAT IS A FACILITY

LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS OR INDUCES MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS OR INDUCES MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:\_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE DATE";

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

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

(g) If the pregnant woman's preborn child has been diagnosed with a life-threatening disability, the physician who is to perform the abortion shall, at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility in which more than 50

1 abortions are performed in any 12-month period:

2 (1) orally and in person, inform the pregnant woman of  
3 the availability of perinatal palliative care, as that term is  
4 defined by Section 161.702; and

5 (2) provide the pregnant woman with a written copy of:

6 (A) the perinatal palliative care informational  
7 materials and list of the perinatal palliative care providers and  
8 programs described by Section 161.703; and

9 (B) the perinatal palliative care certification  
10 form described by Section 161.704.

11 (h) If a pregnant woman described by Subsection (g), after  
12 receiving from the physician who is to perform or induce the  
13 abortion the perinatal palliative care informational materials and  
14 certification form described by that subsection in the manner  
15 required by that subsection, chooses to have an abortion instead of  
16 continuing the pregnancy in perinatal palliative care, the  
17 physician may perform or induce the abortion only after:

18 (1) the pregnant woman signs the certification form;  
19 and

20 (2) the physician places the signed certification form  
21 in the pregnant woman's medical records.

22 SECTION 2.09. Section [171.0121](#), Health and Safety Code, is  
23 amended to read as follows:

24 Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion  
25 begins, a copy of the signed, written certification received by the  
26 physician under Section [171.012\(a\)\(6\)](#) and, if applicable, under  
27 Section 161.704 must be placed in the pregnant woman's medical

1 records.

2 (b) A copy of the signed, written certification required  
3 under Sections 171.012(a)(5) and (6) and of any signed, written  
4 certification required under Section 161.704 shall be retained by  
5 the facility where the abortion is performed or induced until:

6 (1) the seventh anniversary of the date the  
7 certification [~~it~~] is signed; or

8 (2) if the pregnant woman is a minor, the later of:

9 (A) the seventh anniversary of the date the  
10 certification [~~it~~] is signed; or

11 (B) the woman's 21st birthday.

12 SECTION 2.10. Section 171.014(a), Health and Safety Code,  
13 is amended to read as follows:

14 (a) The department shall publish informational materials  
15 that include:

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

19 (2) the materials required by Sections 161.703,  
20 171.015, and 171.016.

21 SECTION 2.11. The heading to Subchapter C, Chapter 171,  
22 Health and Safety Code, is amended to read as follows:

23 SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS PROBABLE  
24 GESTATIONAL AGE [~~POST-FERTILIZATION~~]

25 SECTION 2.12. Section 171.042, Health and Safety Code, is  
26 amended by adding Subdivision (1-a) to read as follows:

27 (1-a) "Probable gestational age" means the duration of

1 a pregnancy measured by the number of weeks and days that have  
2 elapsed from the first day of the pregnant woman's last menstrual  
3 period out of an expected 40-week gestation.

4 SECTION 2.13. Sections 171.043, 171.044, and 171.045,  
5 Health and Safety Code, are amended to read as follows:

6 Sec. 171.043. DETERMINATION OF PROBABLE GESTATIONAL  
7 ~~[POST-FERTILIZATION]~~ AGE REQUIRED. Except as otherwise provided by  
8 Section 171.046, a physician may not perform or induce or attempt to  
9 perform or induce an abortion without, prior to the procedure:

10 (1) making a determination of the probable gestational  
11 ~~[post-fertilization]~~ age of the preborn ~~[unborn]~~ child; or

12 (2) possessing and relying on a determination of the  
13 probable gestational ~~[post-fertilization]~~ age of the preborn  
14 ~~[unborn]~~ child made by another physician.

15 Sec. 171.044. ABORTION OF PREBORN ~~[UNBORN]~~ CHILD OF 20 OR  
16 MORE WEEKS PROBABLE GESTATIONAL ~~[POST-FERTILIZATION]~~ AGE  
17 PROHIBITED. Except as otherwise provided by Section 171.046, a  
18 person may not perform or induce or attempt to perform or induce an  
19 abortion on a woman if it has been determined, by the physician  
20 performing, inducing, or attempting to perform or induce the  
21 abortion or by another physician on whose determination that  
22 physician relies, that the probable gestational  
23 ~~[post-fertilization]~~ age of the preborn ~~[unborn]~~ child is 20 or  
24 more weeks.

25 Sec. 171.045. METHOD OF ABORTION. (a) This section applies  
26 only to an abortion authorized under Section 171.046(a)(1) or (2)  
27 in which:

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

3 (2) the probable gestational [~~post-fertilization~~] age  
4 of the preborn [~~unborn~~] child has not been determined but could  
5 reasonably be 20 or more weeks.

6 (b) Except as otherwise provided by Section 171.046(a)(3),  
7 a physician performing or inducing an abortion under Subsection (a)  
8 shall terminate the pregnancy in the manner that, in the  
9 physician's reasonable medical judgment, provides the best  
10 opportunity for the preborn [~~unborn~~] child to survive.

11 SECTION 2.14. Section 171.046(a), Health and Safety Code,  
12 is amended to read as follows:

13 (a) The prohibitions and requirements under Sections  
14 171.043, 171.044, and 171.045(b) do not apply to an abortion  
15 performed or induced if there exists a condition that, in the  
16 physician's reasonable medical judgment, so complicates the  
17 medical condition of the woman that, to avert the woman's death or a  
18 serious risk of substantial and irreversible physical impairment of  
19 a major bodily function, other than a psychological condition, it  
20 necessitates, as applicable:

21 (1) the immediate abortion of her pregnancy without  
22 the delay necessary to determine the probable gestational  
23 [~~post-fertilization~~] age of the preborn [~~unborn~~] child;

24 (2) the abortion of her pregnancy even though the  
25 probable gestational [~~post-fertilization~~] age of the preborn  
26 [~~unborn~~] child is 20 or more weeks; or

27 (3) the use of a method of abortion other than a method

1 described by Section 171.045(b).

2 SECTION 2.15. Section 285.202(a), Health and Safety Code,  
3 is amended to read as follows:

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

11 SECTION 2.16. Section 164.052(a), Occupations Code, is  
12 amended to read as follows:

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

15 (1) submits to the board a false or misleading  
16 statement, document, or certificate in an application for a  
17 license;

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

20 (3) commits fraud or deception in taking or passing an  
21 examination;

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

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

27 (6) uses an advertising statement that is false,

1 misleading, or deceptive;

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

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

10           (9) alters, with fraudulent intent, a medical license,  
11 certificate, or diploma, or a transcript of a medical license,  
12 certificate, or diploma;

13           (10) uses a medical license, certificate, or diploma,  
14 or a transcript of a medical license, certificate, or diploma that  
15 has been:

16                   (A) fraudulently purchased or issued;

17                   (B) counterfeited; or

18                   (C) materially altered;

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

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

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

27           (14) directly or indirectly employs a person whose

1 license to practice medicine has been suspended, canceled, or  
2 revoked;

3 (15) associates in the practice of medicine with a  
4 person:

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

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

9 (16) performs or procures a criminal abortion, aids or  
10 abets in the procuring of a criminal abortion, attempts to perform  
11 or procure a criminal abortion, or attempts to aid or abet the  
12 performance or procurement of a criminal abortion;

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

16 (18) performs or induces or attempts to perform or  
17 induce an abortion on a woman who is pregnant with a preborn [~~viable~~  
18 ~~unborn~~] child during the third trimester of the pregnancy unless[+

19 [~~(A)~~] the abortion is necessary due to a medical  
20 emergency, as defined by Section 171.002, Health and Safety Code  
21 [~~to prevent the death of the woman,~~

22 [~~(B) the viable unborn child has a severe,~~  
23 ~~irreversible brain impairment, or~~

24 [~~(C) the woman is diagnosed with a significant~~  
25 ~~likelihood of suffering imminent severe, irreversible brain damage~~  
26 ~~or imminent severe, irreversible paralysis];~~

27 (19) performs or induces or attempts to perform or

1 induce an abortion on an unemancipated minor without the written  
2 consent of the child's parent, managing conservator, or legal  
3 guardian or without a court order, as provided by Section 33.003 or  
4 33.004, Family Code, unless the abortion is necessary due to a  
5 medical emergency, as defined by Section 171.002, Health and Safety  
6 Code;

7 (20) otherwise performs or induces or attempts to  
8 perform or induce an abortion on an unemancipated minor in  
9 violation of Chapter 33, Family Code;

10 (21) performs or induces or attempts to perform or  
11 induce an abortion in violation of Subchapter C, F, or G, Chapter  
12 171, Health and Safety Code; [~~or~~]

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

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

20 SECTION 2.17. Section 164.055(b), Occupations Code, is  
21 amended to read as follows:

22 (b) The sanctions provided by Subsection (a) are in addition  
23 to any other grounds for refusal to admit persons to examination  
24 under this subtitle or to issue a license or renew a license to  
25 practice medicine under this subtitle. The criminal penalties  
26 provided by Section 165.152 do not apply to a violation of Section  
27 170.002 or 170.052, Health and Safety Code, or Subchapter C, F, or

1 G, Chapter 171, Health and Safety Code.

2 SECTION 2.18. The following provisions of the Health and  
3 Safety Code are repealed:

- 4 (1) Section 170.001(3);
- 5 (2) Sections 171.042(1) and (2);
- 6 (3) Section 171.046(c); and
- 7 (4) Sections 285.202(a-1) and (a-2).

8 ARTICLE 3. ABORTION PROHIBITED AFTER DETECTION OF FETAL HEARTBEAT

9 SECTION 3.01. Chapter 171, Health and Safety Code, is  
10 amended by adding Subchapter H to read as follows:

11 SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

12 Sec. 171.201. DEFINITIONS. In this subchapter:

13 (1) "Fetal heartbeat" means cardiac activity or the  
14 steady and repetitive rhythmic contraction of the fetal heart  
15 within the gestational sac.

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

18 (3) "Gestational sac" means the structure comprising  
19 the extraembryonic membranes that envelop the unborn child and that  
20 is typically visible by ultrasound after the fourth week of  
21 pregnancy.

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

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

27 (A) begins with fertilization;

1           (B) occurs when the woman is carrying the  
2 developing human offspring; and

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

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

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

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

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

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

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

20           (4) to make an informed choice about whether to  
21 continue her pregnancy, the pregnant woman has a compelling  
22 interest in knowing the likelihood of her unborn child surviving to  
23 full-term birth based on the presence of cardiac activity.

24          Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT  
25 REQUIRED; RECORD. (a) For the purposes of determining the presence  
26 of a fetal heartbeat under this section, "standard medical  
27 practice" includes employing the appropriate means of detecting the

1 heartbeat based on the estimated gestational age of the unborn  
2 child and the condition of the woman and her pregnancy.

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

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

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

12 (2) appropriate for the estimated gestational age of  
13 the unborn child and the condition of the pregnant woman and her  
14 pregnancy.

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

17 (1) the estimated gestational age of the unborn child;

18 (2) the method used to estimate the gestational age;

19 and

20 (3) the test used for detecting a fetal heartbeat,  
21 including the date, time, and results of the test.

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

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

4       (c) This section does not affect:

5           (1) the provisions of this chapter that restrict or  
6 regulate an abortion by a particular method or during a particular  
7 stage of pregnancy; or

8           (2) any other provision of state law that regulates or  
9 prohibits abortion.

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

11 (a) Sections 171.203 and 171.204 do not apply if a physician  
12 believes a medical emergency exists that prevents compliance with  
13 this subchapter.

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

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

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

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

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

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

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

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

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

11           Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a)  
12 Notwithstanding Section 171.005 or any other law, the requirements  
13 of this subchapter shall be enforced exclusively through the  
14 private civil actions described in Section 171.208. No enforcement  
15 of this subchapter, and no enforcement of Chapters 19 and 22, Penal  
16 Code, in response to violations of this subchapter, may be taken or  
17 threatened by this state, a political subdivision, a district or  
18 county attorney, or an executive or administrative officer or  
19 employee of this state or a political subdivision against any  
20 person, except as provided in Section 171.208.

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

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

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

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

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

5           (1) performs or induces an abortion in violation of  
6 this chapter;

7           (2) knowingly engages in conduct that aids or abets  
8 the performance or inducement of an abortion, including paying for  
9 or reimbursing the costs of an abortion through insurance or  
10 otherwise, if the abortion is performed or induced in violation of  
11 this chapter, regardless of whether the person knew or should have  
12 known that the abortion would be performed or induced in violation  
13 of this chapter; or

14           (3) intends to engage in the conduct described by  
15 Subdivision (1) or (2).

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

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

21           (2) statutory damages in an amount of not less than  
22 \$10,000 for each abortion that the defendant performed or induced  
23 in violation of this chapter, and for each abortion performed or  
24 induced in violation of this chapter that the defendant aided or  
25 abetted; and

26           (3) costs and attorney's fees.

27       (c) Notwithstanding Subsection (b), a court may not award

1 relief under this section in response to a violation of Subsection  
2 (a)(1) or (2) if the defendant demonstrates that the defendant  
3 previously paid the full amount of statutory damages under  
4 Subsections (b)(2) and (3) in a previous action for that particular  
5 abortion performed or induced in violation of this chapter, or for  
6 the particular conduct that aided or abetted an abortion performed  
7 or induced in violation of this chapter.

8 (d) Notwithstanding Chapter 16, Civil Practice and Remedies  
9 Code, or any other law, a person may bring an action under this  
10 section not later than the sixth anniversary of the date the cause  
11 of action accrues.

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

14 (1) ignorance or mistake of law;

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

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

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

24 (5) non-mutual issue preclusion or non-mutual claim  
25 preclusion;

26 (6) the consent of the unborn child's mother to the  
27 abortion; or

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

5           (f) It is an affirmative defense if:

6           (1) a person sued under Subsection (a)(2) reasonably  
7 believed, after conducting a reasonable investigation, that the  
8 physician performing or inducing the abortion had complied or would  
9 comply with this chapter; or

10           (2) a person sued under Subsection (a)(3) reasonably  
11 believed, after conducting a reasonable investigation, that the  
12 physician performing or inducing the abortion will comply with this  
13 chapter.

14           (f-1) The defendant has the burden of proving an affirmative  
15 defense under Subsection (f)(1) or (2) by a preponderance of the  
16 evidence.

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

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

1 (i) Notwithstanding any other law, a court may not award  
2 costs or attorney's fees under the Texas Rules of Civil Procedure or  
3 any other rule adopted by the supreme court under Section 22.004,  
4 Government Code, to a defendant in an action brought under this  
5 section.

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

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

15 (2) the defendant has standing to assert the rights of  
16 women seeking an abortion under the tests for third-party standing  
17 established by the United States Supreme Court.

18 (b) A defendant in an action brought under Section 171.208  
19 may assert an affirmative defense to liability under this section  
20 if:

21 (1) the defendant has standing to assert the  
22 third-party rights of a woman or a group of women seeking an  
23 abortion in accordance with Subsection (a); and

24 (2) the defendant demonstrates that the relief sought  
25 by the claimant will impose an undue burden on that woman or a group  
26 of women seeking an abortion.

27 (c) A court may not find an undue burden under Subsection

1 (b) unless the defendant introduces evidence proving that:

2 (1) an award of relief will prevent a woman or a group  
3 of women from obtaining an abortion; or

4 (2) an award of relief will place a substantial  
5 obstacle in the path of a woman or a group of women who are seeking  
6 an abortion.

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

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

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

15 (e) The affirmative defense under Subsection (b) is not  
16 available if the United States Supreme Court overrules *Roe v. Wade*,  
17 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833  
18 (1992), regardless of whether the conduct on which the cause of  
19 action is based under Section 171.208 occurred before the Supreme  
20 Court overruled either of those decisions.

21 (f) Nothing in this section shall in any way limit or  
22 preclude a defendant from asserting the defendant's personal  
23 constitutional rights as a defense to liability under Section  
24 171.208, and a court may not award relief under Section 171.208 if  
25 the conduct for which the defendant has been sued was an exercise of  
26 state or federal constitutional rights that personally belong to  
27 the defendant.

1       Sec. 171.210. CIVIL LIABILITY: VENUE. (a) Notwithstanding  
2 any other law, including Section 15.002, Civil Practice and  
3 Remedies Code, a civil action brought under Section 171.208 shall  
4 be brought in:

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

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

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

11           (4) the county of residence for the claimant if the  
12 claimant is a natural person residing in this state.

13       (b) If a civil action is brought under Section 171.208 in  
14 any one of the venues described by Subsection (a), the action may  
15 not be transferred to a different venue without the written consent  
16 of all parties.

17       Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL  
18 IMMUNITY PRESERVED. (a) This section prevails over any  
19 conflicting law, including:

20           (1) the Uniform Declaratory Judgments Act; and

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

22       (b) This state has sovereign immunity, a political  
23 subdivision has governmental immunity, and each officer and  
24 employee of this state or a political subdivision has official  
25 immunity in any action, claim, or counterclaim or any type of legal  
26 or equitable action that challenges the validity of any provision  
27 or application of this chapter, on constitutional grounds or

1 otherwise.

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

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

13 (b) If any application of any provision in this chapter to  
14 any person, group of persons, or circumstances is found by a court  
15 to be invalid or unconstitutional, the remaining applications of  
16 that provision to all other persons and circumstances shall be  
17 severed and may not be affected. All constitutionally valid  
18 applications of this chapter shall be severed from any applications  
19 that a court finds to be invalid, leaving the valid applications in  
20 force, because it is the legislature's intent and priority that the  
21 valid applications be allowed to stand alone. Even if a reviewing  
22 court finds a provision of this chapter to impose an undue burden in  
23 a large or substantial fraction of relevant cases, the applications  
24 that do not present an undue burden shall be severed from the  
25 remaining applications and shall remain in force, and shall be  
26 treated as if the legislature had enacted a statute limited to the  
27 persons, group of persons, or circumstances for which the statute's

1 application does not present an undue burden.

2 (b-1) If any court declares or finds a provision of this  
3 chapter facially unconstitutional, when discrete applications of  
4 that provision can be enforced against a person, group of persons,  
5 or circumstances without violating the United States Constitution  
6 and Texas Constitution, those applications shall be severed from  
7 all remaining applications of the provision, and the provision  
8 shall be interpreted as if the legislature had enacted a provision  
9 limited to the persons, group of persons, or circumstances for  
10 which the provision's application will not violate the United  
11 States Constitution and Texas Constitution.

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

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

23 (e) No court may decline to enforce the severability  
24 requirements of Subsections (a), (b), (b-1), (c), and (d) on the  
25 ground that severance would rewrite the statute or involve the  
26 court in legislative or lawmaking activity. A court that declines  
27 to enforce or enjoins a state official from enforcing a statutory

1 provision does not rewrite a statute, as the statute continues to  
2 contain the same words as before the court's decision. A judicial  
3 injunction or declaration of unconstitutionality:

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

8 (2) is not a formal amendment of the language in a  
9 statute; and

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

13 SECTION 3.02. Chapter 30, Civil Practice and Remedies Code,  
14 is amended by adding Section 30.022 to read as follows:

15 Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS  
16 CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any  
17 person, including an entity, attorney, or law firm, who seeks  
18 declaratory or injunctive relief to prevent this state, a political  
19 subdivision, or any governmental entity or public official in this  
20 state from enforcing any statute, ordinance, rule, regulation, or  
21 any other type of law that regulates or restricts abortion or that  
22 limits taxpayer funding for individuals or entities that perform or  
23 promote abortions, in any state or federal court, or that  
24 represents any litigant seeking such relief in any state or federal  
25 court, is jointly and severally liable to pay the costs and  
26 attorney's fees of the prevailing party.

27 (b) For purposes of this section, a party is considered a

1 prevailing party if a state or federal court:

2 (1) dismisses any claim or cause of action brought  
3 against the party that seeks the declaratory or injunctive relief  
4 described by Subsection (a), regardless of the reason for the  
5 dismissal; or

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

8 (c) Regardless of whether a prevailing party sought to  
9 recover costs or attorney's fees in the underlying action, a  
10 prevailing party under this section may bring a civil action to  
11 recover costs and attorney's fees against a person, including an  
12 entity, attorney, or law firm, that sought declaratory or  
13 injunctive relief described by Subsection (a) not later than the  
14 third anniversary of the date on which, as applicable:

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

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

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

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

22 (2) the court in the underlying action declined to  
23 recognize or enforce the requirements of this section; or

24 (3) the court in the underlying action held that any  
25 provisions of this section are invalid, unconstitutional, or  
26 preempted by federal law, notwithstanding the doctrines of issue or  
27 claim preclusion.

1 SECTION 3.03. Subchapter C, Chapter 311, Government Code,  
2 is amended by adding Section 311.036 to read as follows:

3 Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A  
4 statute that regulates or prohibits abortion may not be construed  
5 to repeal any other statute that regulates or prohibits abortion,  
6 either wholly or partly, unless the repealing statute explicitly  
7 states that it is repealing the other statute.

8 (b) A statute may not be construed to restrict a political  
9 subdivision from regulating or prohibiting abortion in a manner  
10 that is at least as stringent as the laws of this state unless the  
11 statute explicitly states that political subdivisions are  
12 prohibited from regulating or prohibiting abortion in the manner  
13 described by the statute.

14 (c) Every statute that regulates or prohibits abortion is  
15 severable in each of its applications to every person and  
16 circumstance. If any statute that regulates or prohibits abortion  
17 is found by any court to be unconstitutional, either on its face or  
18 as applied, then all applications of that statute that do not  
19 violate the United States Constitution and Texas Constitution shall  
20 be severed from the unconstitutional applications and shall remain  
21 enforceable, notwithstanding any other law, and the statute shall  
22 be interpreted as if containing language limiting the statute's  
23 application to the persons, group of persons, or circumstances for  
24 which the statute's application will not violate the United States  
25 Constitution and Texas Constitution.

26 SECTION 3.04. Section 171.005, Health and Safety Code, is  
27 amended to read as follows:

1           Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE;  
2 EXCEPTION. The commission [~~department~~] shall enforce this chapter  
3 except for Subchapter H, which shall be enforced exclusively  
4 through the private civil enforcement actions described by Section  
5 171.208 and may not be enforced by the commission.

6           SECTION 3.05. Section 245.011(c), Health and Safety Code,  
7 is amended to read as follows:

8           (c) The report must include:

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

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

13                   (3) the type of abortion procedure;

14                   (4) the date the abortion was performed;

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

17                   (6) the probable post-fertilization age of the unborn  
18 child based on the best medical judgment of the attending physician  
19 at the time of the procedure;

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

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

23 [~~and~~]

24                   (9) the number of previous induced abortions of the  
25 patient;

26                   (10) whether the abortion was performed or induced  
27 because of a medical emergency and any medical condition of the

1 pregnant woman that required the abortion; and

2 (11) the information required under Sections  
3 171.008(a) and (c).

4 ARTICLE 4. PROHIBITION OF ABORTION

5 SECTION 4.01. Chapter 170, Health and Safety Code, is  
6 amended by adding Subchapter C to read as follows:

7 SUBCHAPTER C. PROHIBITION OF ABORTION

8 Sec. 170.101. ABORTION PROHIBITED. Notwithstanding any  
9 other law, a person may not perform, induce, or attempt to perform  
10 or induce an abortion unless the abortion is performed, induced, or  
11 attempted to be performed or induced by a physician because of a  
12 medical emergency as defined by Section 171.002.

13 Sec. 170.102. CIVIL REMEDY. (a) A civil action may be  
14 brought against a person who violated Section 170.101 by:

15 (1) the woman on whom an abortion was performed,  
16 induced, or attempted in violation of Section 170.101;

17 (2) the father of the preborn child for an abortion  
18 performed, induced, or attempted on a pregnant woman in violation  
19 of Section 170.101, unless the woman's pregnancy resulted from the  
20 father's criminal conduct; or

21 (3) a maternal grandparent of the preborn child for an  
22 abortion performed, induced, or attempted in violation of Section  
23 170.101 on a pregnant woman who was less than 18 years of age at the  
24 time of the violation, unless the woman's pregnancy resulted from  
25 the maternal grandparent's criminal conduct.

26 (b) A person who brings an action under this section may  
27 obtain:

1           (1) injunctive relief;

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

3               (A) actual damages for all psychological,  
4 emotional, and physical injuries resulting from the violation of  
5 Section 170.101;

6               (B) court costs; and

7               (C) reasonable attorney's fees; or

8           (3) both injunctive relief and damages.

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

11               (1) in a district court in the county in which the  
12 woman on whom an abortion was performed, induced, or attempted in  
13 violation of Section 170.101 resides; and

14               (2) not later than the sixth anniversary of the date  
15 the abortion was performed, induced, or attempted in violation of  
16 Section 170.101.

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

19           (e) A civil action under this section may not be brought  
20 against a woman on whom an abortion is performed, induced, or  
21 attempted in violation of Section 170.101.

22           Sec. 170.103. REVOCATION OR SUSPENSION OF LICENSE. A  
23 physician who violates Section 170.101 engages in unprofessional  
24 conduct for which the physician's license may be suspended or  
25 revoked under Chapter 164, Occupations Code.

26           SECTION 4.02. Section 19.06, Penal Code, is amended to read  
27 as follows:

Sec. 19.06. APPLICABILITY TO CERTAIN CONDUCT.

1            Notwithstanding any other law, this [~~This~~] chapter applies [~~does~~  
2 ~~not apply~~] to the death of a preborn [~~an unborn~~] child unless [~~if~~]  
3 the conduct charged is:

4            (1) conduct committed by the mother of the preborn  
5 [~~unborn~~] child; or

6            (2) an abortion performed, induced, or attempted to be  
7 performed or induced by a physician because of a medical emergency  
8 as defined by Section 171.002, Health and Safety Code [~~a lawful~~  
9 ~~medical procedure performed by a physician or other licensed health~~  
10 ~~care provider with the requisite consent, if the death of the unborn~~  
11 ~~child was the intended result of the procedure,~~

12            [~~(3) a lawful medical procedure performed by a~~  
13 ~~physician or other licensed health care provider with the requisite~~  
14 ~~consent as part of an assisted reproduction as defined by Section~~  
15 ~~160.102, Family Code, or~~

16            [~~(4) the dispensation of a drug in accordance with law~~  
17 ~~or administration of a drug prescribed in accordance with law].~~

18            SECTION 4.03. Section 22.12, Penal Code, is amended to read  
19 as follows:

20            Sec. 22.12. APPLICABILITY TO CERTAIN CONDUCT.

21            Notwithstanding any other law, this [~~This~~] chapter applies [~~does~~  
22 ~~not apply~~] to conduct charged as having been committed against an  
23 individual who is a preborn [~~an unborn~~] child unless [~~if~~] the  
24 conduct is:

25            (1) committed by the mother of the preborn [~~unborn~~]  
26 child; or

1           (2) an abortion performed, induced, or attempted to be  
2 performed or induced by a physician because of a medical emergency  
3 as defined by Section 171.002, Health and Safety Code [~~a lawful~~  
4 ~~medical procedure performed by a physician or other health care~~  
5 ~~provider with the requisite consent,~~

6           [~~(3) a lawful medical procedure performed by a~~  
7 ~~physician or other licensed health care provider with the requisite~~  
8 ~~consent as part of an assisted reproduction as defined by Section~~  
9 ~~160.102, Family Code; or~~

10           [~~(4) the dispensation of a drug in accordance with law~~  
11 ~~or administration of a drug prescribed in accordance with law].~~

12           SECTION 4.04. The following provisions are repealed:

13           (1) Section 33.002(b), Family Code; and

14           (2) Section 171.063(b), Health and Safety Code.

15           SECTION 4.05. (a) Subchapter C, Chapter 170, Health and  
16 Safety Code, as added by this article, and Sections 19.06 and 22.12,  
17 Penal Code, as amended by this article, shall be construed, as a  
18 matter of state law, to be enforceable to the maximum possible  
19 extent consistent with but not further than federal constitutional  
20 requirements, even if that construction is not readily apparent, as  
21 such constructions are authorized only to the extent necessary to  
22 save the subchapter from judicial invalidation. Judicial  
23 reformation of statutory language is explicitly authorized only to  
24 the extent necessary to save the statutory provision from  
25 invalidity.

26           (b) If any court determines that a provision described by  
27 Subsection (a) of this section is unconstitutionally vague, the

1 court shall interpret the provision, as a matter of state law, to  
2 avoid the vagueness problem and shall enforce the provision to the  
3 maximum possible extent. If a federal court finds any provision  
4 described by Subsection (a) of this section or its application to  
5 any person, group of persons, or circumstances to be  
6 unconstitutionally vague and declines to impose the saving  
7 construction described by this section, the Texas Supreme Court  
8 shall provide an authoritative construction of the objectionable  
9 statutory provisions that avoids the constitutional problems while  
10 enforcing the statute's restrictions to the maximum possible extent  
11 and shall agree to answer any question certified from a federal  
12 appellate court regarding the statute.

13 (c) An executive or administrative state official may not  
14 decline to enforce a provision described by Subsection (a) of this  
15 section, or adopt a construction of that provision or this section  
16 in a way that narrows its applicability, based on the official's own  
17 beliefs concerning the requirements of the state or federal  
18 constitution, unless the official is enjoined by a state or federal  
19 court from enforcing that provision.

20 (d) Sections 19.06 and 22.12, Penal Code, as amended by this  
21 article, may not be construed to authorize the prosecution of or a  
22 cause of action to be brought against a woman on whom an abortion is  
23 performed, induced, or attempted to be performed or induced in  
24 violation of Section 170.101, Health and Safety Code, as added by  
25 this article.

26 ARTICLE 5. TRANSITIONS, SEVERABILITY, PREEMPTION,  
27 CONSTITUTIONALITY, AND EFFECTIVE DATE

1 SECTION 5.01. Not later than December 1, 2021:

2 (1) the Health and Human Services Commission shall:

3 (A) develop the perinatal palliative care  
4 informational materials, list of perinatal palliative care  
5 providers and programs, and perinatal palliative care  
6 certification form required by Subchapter X, Chapter 161, Health  
7 and Safety Code, as added by this Act; and

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

11 (2) the executive commissioner of the Health and Human  
12 Services Commission shall adopt any rules necessary to implement  
13 Subchapter X, Chapter 161, Health and Safety Code, as added by this  
14 Act, and Subchapter B, Chapter 171, Health and Safety Code, as  
15 amended by this Act.

16 SECTION 5.02. (a) Subchapter X, Chapter 161, Health and  
17 Safety Code, as added by this Act, applies only to a diagnosis of a  
18 life-threatening disability of a pregnant woman's preborn child  
19 made on or after January 1, 2022.

20 (b) Subchapter B, Chapter 170, Health and Safety Code, as  
21 added by this Act, Subchapters B and C, Chapter 171, Health and  
22 Safety Code, as amended by this Act, and Chapter 164, Occupations  
23 Code, as amended by this Act, apply only to an abortion performed,  
24 induced, or attempted to be performed or induced or other conduct  
25 that occurred on or after January 1, 2022. An abortion performed,  
26 induced, or attempted to be performed or induced or other conduct  
27 that occurred before that date is governed by the law in effect

1 immediately before the effective date of this Act, and that law is  
2 continued in effect for that purpose.

3 (c) Subchapter C, Chapter 170, Health and Safety Code, as  
4 added by this Act, applies only to an abortion that is performed,  
5 induced, or attempted to be performed or induced on or after the  
6 effective date of Article 4 of this Act.

7 (d) Subchapter H, Chapter 171, Health and Safety Code, as  
8 added by this Act, applies only to an abortion performed, induced,  
9 or attempted to be performed or induced on or after January 1, 2022.

10 (e) Sections 19.06 and 22.12, Penal Code, as amended by this  
11 Act, apply only to conduct that occurs on or after the effective  
12 date of Article 4 of this Act. Conduct that occurs before that date  
13 is governed by the law in effect on the date the conduct occurred,  
14 and that law is continued in effect for that purpose.

15 (f) Sections 19.06 and 22.12, Penal Code, as amended by this  
16 Act, apply only to an offense committed on or after the effective  
17 date of Article 4 of this Act. An offense committed before that  
18 date is governed by the law in effect when the offense was  
19 committed, and the former law is continued in effect for that  
20 purpose. For purposes of this subsection, an offense is committed  
21 before the effective date of Article 4 of this Act if any element of  
22 the offense occurs before that date.

23 SECTION 5.03. (a) It is the intent of the legislature that  
24 if a court suspends enforcement of any provision of this Act, the  
25 suspension is not to be regarded as repealing that provision.

26 (b) If any provision of this Act is held invalid or if the  
27 application of any provision to any person or circumstance is held

1 invalid, the invalidity of that provision or application does not  
2 affect any other provision or application of this Act that can be  
3 given effect without the invalid provision or application, and to  
4 this end, the provisions of this Act are severable. It is the  
5 intent of the legislature that any invalidity or potential  
6 invalidity of a provision of this Act does not impair the immediate  
7 and continuing enforceability of the remaining provisions. It is  
8 furthermore the intent of the legislature that the provisions of  
9 this Act do not have the effect of repealing or limiting any other  
10 laws of this state.

11 (c) The legislature intends that each provision of this Act  
12 as applicable to each individual woman is severable from each other  
13 provision of this Act. In the unexpected event that a court finds  
14 the application of any provision of this Act to impose an  
15 impermissible undue burden on any pregnant woman or group of  
16 pregnant women, the application of the provision to those women is  
17 severed from the application of the remaining provisions of this  
18 Act that do not impose an undue burden, and those remaining  
19 applications remain in force and unaffected, consistent with  
20 Section 5.02 of this article.

21 SECTION 5.04. (a) After the issuance of a decision by the  
22 United States Supreme Court overruling any prior ruling that  
23 prohibits states from wholly or partly prohibiting abortion, the  
24 issuance of any court order or judgment restoring, expanding, or  
25 clarifying the authority of states to wholly or partly prohibit or  
26 regulate abortion, or the effective date of an amendment to the  
27 United States Constitution restoring, expanding, or clarifying the

1 authority of states to wholly or partly prohibit or regulate  
2 abortion, the attorney general may apply to the appropriate state  
3 or federal court for:

4 (1) a declaration that any one or more provisions of  
5 this Act are constitutional; or

6 (2) a judgment or order lifting an injunction against  
7 the enforcement of any one or more provisions of this Act.

8 (b) If the attorney general fails to apply for the relief  
9 described by Subsection (a) of this section not later than the 30th  
10 day after the date an event described by that subsection occurs, any  
11 district attorney may apply to the appropriate state or federal  
12 court for the relief described by that subsection.

13 SECTION 5.05. The Health and Human Services Commission is  
14 required to implement a provision of this Act only if the  
15 legislature appropriates money to the commission specifically for  
16 that purpose. If the legislature does not appropriate money  
17 specifically for that purpose, the commission may, but is not  
18 required to, implement a provision of this Act using other  
19 appropriations that are available for that purpose.

20 SECTION 5.06. (a) Except as otherwise provided by this  
21 section, this Act takes effect September 1, 2021.

22 (b) Article 4 of this Act takes effect the earlier of:

23 (1) to the extent permitted, on the 30th day after:

24 (A) the issuance of a United States Supreme Court  
25 judgment in a decision overruling, wholly or partly, *Roe v. Wade*,  
26 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505  
27 U.S. 833 (1992), thereby allowing the states of the United States to

1 prohibit abortion;

2 (B) the issuance of any other United States  
3 Supreme Court judgment in a decision that recognizes, wholly or  
4 partly, the authority of the states to prohibit abortion; or

5 (C) adoption of an amendment to the United States  
6 Constitution that, wholly or partly, restores to the states the  
7 authority to prohibit abortion;

8 (2) the 91st day after the date the attorney general  
9 submits a report required by Section 171.0055, Health and Safety  
10 Code, as added by this Act, that certifies that a court of competent  
11 jurisdiction has held provisions substantially similar to the  
12 provisions in Article 4 of this Act to be constitutional; or

13 (3) September 1, 2025.