

By: Hughes, et al.

S.B. No. 8

A BILL TO BE ENTITLED

AN ACT

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

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

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

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 The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion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

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

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

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

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

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

1 pregnancy.

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

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

7 (A) begins with fertilization;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (c) This section does not affect:

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

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

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

18 (a) Sections 171.203 and 171.204 do not apply if a physician
19 believes a medical emergency exists that prevents compliance with
20 this subchapter.

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

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

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

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

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

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

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

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

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

18 Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT.

19 (a) Notwithstanding Section 171.005 or any other law, the
20 requirements of this subchapter shall be enforced exclusively
21 through the private civil actions described in Section 171.208. No
22 enforcement of this subchapter, and no enforcement of Chapters 19
23 and 22, Penal Code, in response to violations of this subchapter,
24 may be taken or threatened by this state, a political subdivision, a
25 district or county attorney, or an executive or administrative
26 officer or employee of this state or a political subdivision
27 against any person, except as provided in Section 171.208.

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

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

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

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

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

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

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

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

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

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

1 (2) statutory damages in an amount of not less than
2 \$10,000 for each abortion that the defendant performed or induced
3 in violation of this chapter, and for each abortion performed or
4 induced in violation of this chapter that the defendant aided or
5 abetted; and

6 (3) costs and attorney's fees.

7 (c) Notwithstanding Subsection (b), a court may not award
8 relief under this section in response to a violation of Subsection
9 (a)(1) or (2) if the defendant demonstrates that the defendant
10 previously paid the full amount of statutory damages under
11 Subsection (b)(2) in a previous action for that particular abortion
12 performed or induced in violation of this chapter, or for the
13 particular conduct that aided or abetted an abortion performed or
14 induced in violation of this chapter.

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

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

21 (1) ignorance or mistake of law;

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

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

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

4 (5) non-mutual issue preclusion or non-mutual claim
5 preclusion;

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

8 (7) any claim that the enforcement of this chapter or
9 the imposition of civil liability against the defendant will
10 violate the constitutional rights of third parties, except as
11 provided by Section 171.209.

12 (f) It is an affirmative defense if:

13 (1) a person sued under Subsection (a)(2) reasonably
14 believed, after conducting a reasonable investigation, that the
15 physician performing or inducing the abortion had complied or would
16 comply with this chapter; or

17 (2) a person sued under Subsection (a)(3) reasonably
18 believed, after conducting a reasonable investigation, that the
19 physician performing or inducing the abortion will comply with this
20 chapter.

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

24 (g) This section may not be construed to impose liability on
25 any speech or conduct protected by the First Amendment of the United
26 States Constitution, as made applicable to the states through the
27 United States Supreme Court's interpretation of the Fourteenth

Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

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

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

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

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

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

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

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

4 (2) the defendant demonstrates that the relief sought
5 by the claimant will impose an undue burden on that woman or that
6 group of women seeking an abortion.

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

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

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

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

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

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

22 (e) The affirmative defense under Subsection (b) is not
23 available if the United States Supreme Court overrules *Roe v. Wade*,
24 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
25 (1992), regardless of whether the conduct on which the cause of
26 action is based under Section 171.208 occurred before the Supreme
27 Court overruled either of those decisions.

1 (f) Nothing in this section shall in any way limit or
2 preclude a defendant from asserting the defendant's personal
3 constitutional rights as a defense to liability under Section
4 171.208, and a court may not award relief under Section 171.208 if
5 the conduct for which the defendant has been sued was an exercise of
6 state or federal constitutional rights that personally belong to
7 the defendant.

8 Sec. 171.210. CIVIL LIABILITY: VENUE.

9 (a) Notwithstanding any other law, including Section 15.002,
10 Civil Practice and Remedies Code, a civil action brought under
11 Section 171.208 shall be brought in:

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

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

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

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

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

24 Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL
25 IMMUNITY PRESERVED. (a) This section prevails over any
26 conflicting law, including:

27 (1) the Uniform Declaratory Judgments Act; and

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

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

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

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

20 (b) If any application of any provision in this chapter to
21 any person, group of persons, or circumstances is found by a court
22 to be invalid or unconstitutional, the remaining applications of
23 that provision to all other persons and circumstances shall be
24 severed and may not be affected. All constitutionally valid
25 applications of this chapter shall be severed from any applications
26 that a court finds to be invalid, leaving the valid applications in
27 force, because it is the legislature's intent and priority that the

1 valid applications be allowed to stand alone. Even if a reviewing
2 court finds a provision of this chapter to impose an undue burden in
3 a large or substantial fraction of relevant cases, the applications
4 that do not present an undue burden shall be severed from the
5 remaining applications and shall remain in force, and shall be
6 treated as if the legislature had enacted a statute limited to the
7 persons, group of persons, or circumstances for which the statute's
8 application does not present an undue burden.

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

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

26 **(d) If any provision of this chapter is found by any court to**
27 **be unconstitutionally vague, then the applications of that**

provision that do not present constitutional vagueness problems shall be severed and remain in force.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

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

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

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

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

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute,

ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

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

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

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

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

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

(2) the time for seeking appellate review expires.

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

(1) a prevailing party under this section failed to

1 seek recovery of costs or attorney's fees in the underlying action;

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

4 (3) the court in the underlying action held that any
5 provisions of this section are invalid, unconstitutional, or
6 preempted by federal law, notwithstanding the doctrines of issue or
7 claim preclusion.

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

10 Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A
11 statute that regulates or prohibits abortion may not be construed
12 to repeal any other statute that regulates or prohibits abortion,
13 either wholly or partly, unless the repealing statute explicitly
14 states that it is repealing the other statute.

15 (b) A statute may not be construed to restrict a political
16 subdivision from regulating or prohibiting abortion in a manner
17 that is at least as stringent as the laws of this state unless the
18 statute explicitly states that political subdivisions are
19 prohibited from regulating or prohibiting abortion in the manner
20 described by the statute.

21 (c) Every statute that regulates or prohibits abortion is
22 severable in each of its applications to every person and
23 circumstance. If any statute that regulates or prohibits abortion
24 is found by any court to be unconstitutional, either on its face or
25 as applied, then all applications of that statute that do not
26 violate the United States Constitution and Texas Constitution shall
27 be severed from the unconstitutional applications and shall remain

enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 6. Section 171.005, Health and Safety Code, is amended to read as follows:

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

SECTION 7. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

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

(b) A physician shall:

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

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

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

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

4 (A) specifies the medical condition the abortion
5 is asserted to address; and

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

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

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

14 SECTION 8. Section 171.012(a), Health and Safety Code, is
15 amended to read as follows:

16 (a) Consent to an abortion is voluntary and informed only
17 if:

18 (1) the physician who is to perform or induce the
19 abortion informs the pregnant woman on whom the abortion is to be
20 performed or induced of:

21 (A) the physician's name;

22 (B) the particular medical risks associated with
23 the particular abortion procedure to be employed, including, when
24 medically accurate:

25 (i) the risks of infection and hemorrhage;

26 (ii) the potential danger to a subsequent
27 pregnancy and of infertility; and

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

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

7 (D) the medical risks associated with carrying
8 the child to term;

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

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

13 (B) the father is liable for assistance in the
14 support of the child without regard to whether the father has
15 offered to pay for the abortion; and

16 (C) public and private agencies provide
17 pregnancy prevention counseling and medical referrals for
18 obtaining pregnancy prevention medications or devices, including
19 emergency contraception for victims of rape or incest;

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

22 (A) provides the pregnant woman with the printed
23 materials described by Section [171.014](#); and

24 (B) informs the pregnant woman that those
25 materials:

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

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

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

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

(4) before any sedative or anesthesia is administered to the pregnant woman and 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 that performs more than 50 abortions in any 12-month period:

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

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

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

1 and internal organs; and

2 (D) the physician who is to perform or induce the
3 abortion or an agent of the physician who is also a sonographer
4 certified by a national registry of medical sonographers makes
5 audible the heart auscultation for the pregnant woman to hear, if
6 present, in a quality consistent with current medical practice and
7 provides, in a manner understandable to a layperson, a simultaneous
8 verbal explanation of the heart auscultation;

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

14 "ABORTION AND SONOGRAM ELECTION

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

18 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
19 ABORTION.

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

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

24 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE
25 HEARTBEAT.

26 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN
27 EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO

ONE OF THE FOLLOWING:

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

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

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

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

(8) FOR A WOMAN WHO LIVES 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 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 OR A FACILITY THAT PERFORMS 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

1 physician who is to perform or induce the abortion receives a copy
2 of the signed, written certification required by Subdivision (5);
3 and

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

7 SECTION 9. Section 245.011(c), Health and Safety Code, is
8 amended to read as follows:

9 (c) The report must include:

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

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

14 (3) the type of abortion procedure;

15 (4) the date the abortion was performed;

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

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

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

23 (8) the number of previous live births of the patient;
24 ~~[and]~~

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

27 (10) whether the abortion was performed or induced

1 because of a medical emergency and any medical condition of the
2 pregnant woman that required the abortion; and

3 (11) the information required under Sections
4 171.008(a) and (c).

5 SECTION 10. Every provision in this Act and every
6 application of the provision in this Act are severable from each
7 other. If any provision or application of any provision in this Act
8 to any person, group of persons, or circumstance is held by a court
9 to be invalid, the invalidity does not affect the other provisions
10 or applications of this Act.

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

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