# BILL ANALYSIS

C.S.S.B. 5
By: Hegar
State Affairs
Committee Report (Substituted)

## BACKGROUND AND PURPOSE

Interested parties, in addressing matters related to the regulation of abortion procedures, providers, and facilities, contend that certain scientific evidence suggests that a preborn child is capable of feeling pain at 20 weeks post-fertilization because all the neuroreceptors for pain are in place and functioning. The parties also point to a recent study by the University of Arkansas for Medical Sciences that notes that fetuses undergoing intrauterine invasive procedures were reported to show coordinated responses signaling the avoidance of tissue injury, responses that are illustrative of pain signaling. These parties contend that this medical and scientific evidence shows that there is a need to enact the Preborn Pain Act and to establish a separate and independent compelling state interest in protecting the life of an unborn child from the stage at which this reported evidence indicates the unborn child is capable of feeling pain. In addition, the parties note that other states have adopted preborn pain laws similar to provisions contemplated by C.S.S.B. 5.

Furthermore, the parties emphasize that certain standards of care also need legislative action, including standards of care relating to the active admitting privileges of a physician performing or inducing an abortion, relating to abortion-inducing drugs, and relating to abortion facilities.

C.S.S.B. 5 seeks to address issues relating to the regulation of abortion procedures, providers, and facilities.

## RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

## ANALYSIS

C.S.S.B. 5 amends the Health and Safety Code to require a physician performing or inducing an abortion to, on the date the abortion is performed, have active admitting privileges at a hospital that is located not further than 30 miles from the location at which the abortion is performed or induced and that provides obstetrical or gynecological health care services. The bill requires the physician to provide the pregnant woman with certain contact information for potential medical assistance needed after the abortion and makes it a Class A misdemeanor offense punishable by a fine not to exceed $4,000 for a physician to violate these requirements.

C.S.S.B. 5 establishes the Preborn Pain Act to prohibit a physician from performing or inducing or attempting to perform or induce an abortion without, prior to the procedure, making a determination of the probable post-fertilization age of the unborn child or possessing and relying on a determination of the probable post-fertilization age of the unborn child made by another physician. The bill defines "post-fertilization age" as the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum. The bill prohibits a person from performing or inducing or attempting to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the

abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks.

C.S.S.B. 5 requires a physician performing an abortion under certain excepted circumstances specified by the bill in which the probable post-fertilization age of the unborn child is 20 or more weeks or the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks to terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive. The bill exempts from the prohibitions and requirements of the Preborn Pain Act an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable, the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child, the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks, or the use of a method of abortion other than the method that provides the best opportunity for the unborn child to survive. The bill prohibits a physician from taking such an authorized action if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function. The bill exempts from the prohibitions and requirements of the Preborn Pain Act an abortion performed on an unborn child who has a severe fetal abnormality, defined as a life-threatening physical condition that, in reasonable medical judgment, is incompatible with life outside the womb regardless of the provision of lifesaving medical treatment.

C.S.S.B. 5 establishes that in a civil or criminal proceeding or action involving an act prohibited under the Preborn Pain Act the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure. The bill requires the court, in such a proceeding or action, to issue orders to the parties, witnesses, and counsel and to direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure. The bill authorizes a court to order the disclosure of such confidential information if a motion is filed with the court requesting release of the information and a hearing on that request, if notice of the hearing is served on each interested party, and if the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure.

C.S.S.B. 5 requires the provisions of the Preborn Pain Act to be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save those provisions from judicial invalidation and establishes that judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

C.S.S.B. 5 requires any court that determines that a provision of the Preborn Pain Act is unconstitutionally vague to interpret the provision, as a matter of state law, to avoid the vagueness problem and to enforce the provision to the maximum possible extent. The bill requires the Supreme Court of Texas, if a federal court finds any such provision or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by the bill, to provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent and to agree to answer any question certified from a federal appellate court regarding the statute.

C.S.S.B. 5 prohibits a state executive or administrative official from declining to enforce the

provisions of the Preborn Pain Act or from adopting a construction of the provisions in a way that narrows the act's applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing those provisions. The bill prohibits the provisions of the Preborn Pain Act from being construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of the act.

C.S.S.B. 5 prohibits a person from knowingly giving, selling, dispensing, administering, providing, or prescribing an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician and the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug, except that a person may provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013. The bill requires a physician, before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, to examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

C.S.S.B. 5 requires a physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to provide the pregnant woman with a copy of the final printed label of that drug and certain contact information for potential medical assistance needed after the administration or use of the drug. The bill requires the physician, or the physician's agent, to schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug, at which the physician is required to confirm that the pregnancy is completely terminated and to assess the degree of bleeding. The bill requires the physician or the physician's agent to make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit and requires the physician or the physician's agent to document a brief description of any effort made to comply with this requirement, including the date, time, and name of the person making the effort, in the woman's medical record.

C.S.S.B. 5 requires a physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion and who knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug to report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred. The bill requires the Texas Medical Board to enforce the bill's provisions relating to abortion-inducing drugs and authorizes the board to take disciplinary action or assess an administrative penalty under the Medical Practice Act against a person who violates the bill's provisions relating to the distribution of such drugs. The bill prohibits such a penalty from being assessed against a pregnant woman who receives a medical abortion.

C.S.S.B. 5 requires the minimum standards for an abortion facility, on and after September 1, 2014, to be equivalent to the minimum standards adopted for ambulatory surgical centers and, effective September 1, 2014, repeals a statutory provision prohibiting certain minimum standards for abortion facilities from being more stringent than Medicare certification standards. The bill requires the executive commissioner of the Health and Human Services Commission to adopt the required minimum standards not later than January 1, 2014, and specifies that a licensed abortion facility is not required to comply with the adopted standards before September 1, 2014. The bill requires the probable post-fertilization age of the unborn child, rather than the period of gestation, to be included in the annual report required to be submitted to the Department of State

Health Services by an abortion facility on each abortion performed at the abortion facility.

C.S.S.B. 5 amends the Occupations Code to make it a prohibited practice for a physician or an applicant for a license to practice medicine to perform or induce or attempt to perform or induce an abortion in violation of the Preborn Pain Act. The bill exempts a violation of the act from the criminal penalties provided under statutory provisions relating to practicing medicine in violation of the Medical Practice Act. The bill provides for the construction, enforcement, and severability of its provisions.

C.S.S.B. 5 repeals Section 245.010(c), Health and Safety Code, effective September 1, 2014.

**EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 5 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

| SENATE ENGROSSED | HOUSE COMMITTEE SUBSTITUTE |
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| No equivalent provision. | SECTION 1. (a) The findings indicate that:<br>(1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;<br>(2) the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;<br>(3) the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and<br>(4) restricting elective abortions at or later than 20 weeks post-fertilization, as provided by this Act, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:<br>(A) the woman has adequate time to decide whether to have an abortion in the first 20 weeks after fertilization; and<br>(B) this Act does not apply to abortions that are necessary to avert the death or |

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| | substantial and irreversible physical impairment of a major bodily function of the pregnant woman.<br>(b) The legislature intends that every application of this statute to every individual woman shall be severable from each other. In the unexpected event that the application of this statute is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of the statute to those women shall be severed from the remaining applications of the statute that do not impose an undue burden, and those remaining applications shall remain in force and unaffected, consistent with Section 10 of this Act. |
| SECTION 1. Subchapter A, Chapter 171, Health and Safety Code, is amended. | SECTION 2. Same as engrossed version. |
| SECTION 2. Chapter 171, Health and Safety Code, is amended by adding Subchapter C to read as follows: | SECTION 3. Chapter 171, Health and Safety Code, is amended by adding Subchapters C and D to read as follows: |
| No equivalent provision. | SUBCHAPTER C. ABORTION PROHIBITED AT OR AFTER 20 WEEKS POST-FERTILIZATION |
| No equivalent provision. | Sec. 171.041. SHORT TITLE. This subchapter may be cited as the Preborn Pain Act. |
| No equivalent provision. | Sec. 171.042. DEFINITIONS. In this subchapter:<br>(1) "Post-fertilization age" means the age of the unborn child as calculated from the fusion of a human spermatozoon with a human ovum.<br>(2) "Severe fetal abnormality" has the meaning assigned by Section 285.202. |
| No equivalent provision. | Sec. 171.043. DETERMINATION OF POST-FERTILIZATION AGE REQUIRED. Except as otherwise provided by Section 171.046, a physician may not perform or induce or attempt to perform or induce an abortion without, prior to the procedure:<br>(1) making a determination of the probable post-fertilization age of the unborn child; or<br>(2) possessing and relying on a determination of the probable post- |

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| | fertilization age of the unborn child made by another physician. |
| No equivalent provision. | Sec. 171.044. ABORTION OF UNBORN CHILD OF 20 OR MORE WEEKS POST-FERTILIZATION AGE PROHIBITED. Except as otherwise provided by Section 171.046, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable post-fertilization age of the unborn child is 20 or more weeks. |
| No equivalent provision. | Sec. 171.045. METHOD OF ABORTION. (a) This section applies only to an abortion authorized under Section 171.046(a)(1) or (2) in which:<br>(1) the probable post-fertilization age of the unborn child is 20 or more weeks; or<br>(2) the probable post-fertilization age of the unborn child has not been determined but could reasonably be 20 or more weeks.<br>(b) Except as otherwise provided by Section 171.046(a)(3), a physician performing an abortion under Subsection (a) shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive. |
| No equivalent provision. | Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:<br>(1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;<br>(2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or<br>(3) the use of a method of abortion other than a method described by Section |

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| | 171.045(b).<br>(b) A physician may not take an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.<br>(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality. |
| No equivalent provision. | Sec. 171.047. PROTECTION OF PRIVACY IN COURT PROCEEDINGS. (a) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under this subchapter, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.<br>(b) Unless the court makes a ruling under Subsection (c) to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.<br>(c) A court may order the disclosure of information that is confidential under this section if:<br>(1) a motion is filed with the court requesting release of the information and a hearing on that request;<br>(2) notice of the hearing is served on each interested party; and<br>(3) the court determines after the hearing and an in camera review that disclosure is essential to the administration of justice and there is no reasonable alternative to disclosure. |
| No equivalent provision. | Sec. 171.048. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with |

federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of this subchapter or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Supreme Court of Texas shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) This subchapter may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter.

SUBCHAPTER C. ABORTION-INDUCING DRUGS

Sec. 171.041. DEFINITIONS. In this subchapter:

SUBCHAPTER D. ABORTION-INDUCING DRUGS

Sec. 171.061. DEFINITIONS. In this subchapter:

(1) "Abortion" means the act of using, administering, prescribing, or otherwise providing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to terminate a clinically diagnosable pregnancy of a woman and with knowledge that the termination by those means will, with reasonable likelihood,

cause the death of the woman's unborn child.

*(See Sec. 171.0411 below.)*

An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion;

(C) remove an ectopic pregnancy; or

(D) treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated.

(1) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(2) "Abortion-inducing drug" means a drug, a medicine, or any other substance, including a regimen of two or more drugs, medicines, or substances, prescribed, dispensed, or administered with the intent of terminating a clinically diagnosable pregnancy of a woman and with knowledge that the termination will, with reasonable likelihood, cause the death of the woman's unborn child. The term includes off-label use of drugs, medicines, or other substances known to have abortion-inducing properties that are prescribed, dispensed, or administered with the intent of causing an abortion, including the Mifeprex regimen. The term does not include a drug, medicine, or other substance that may be known to cause an abortion but is prescribed, dispensed, or administered for other medical reasons.

(2) "Final printed label" or "FPL" means the informational document approved by the United States Food and Drug Administration for an abortion-inducing drug that:

(A) outlines the protocol authorized by that agency and agreed to by the drug company applying for authorization of the drug by that agency; and

(B) delineates how a drug is to be used according to approval by that agency.

(3) "Final printed label" or "FPL" means the informational document approved by the United States Food and Drug Administration for an abortion-inducing drug that:

(A) outlines the protocol authorized by that agency and agreed to by the drug company applying for authorization of the drug by that agency; and

(B) delineates how a drug is to be used according to approval by that agency.

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

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

(4) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion.

(5) "Medical abortion" means the administration or use of an abortion-inducing drug to induce an abortion.

(5) "Mifeprex regimen," "RU-486 regimen," or "RU-486" means the abortion-inducing drug regimen approved by the United States Food and Drug Administration that consists of

(6) "Mifeprex regimen," "RU-486 regimen," or "RU-486" means the abortion-inducing drug regimen approved by the United States Food and Drug Administration that consists of

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| administering mifepristone and misoprostal. | administering mifepristone and misoprostol. |
| (6) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine. | (7) "Physician" means an individual who is licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine. |
| (7) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus. | (8) "Pregnant" means the female reproductive condition of having an unborn child in a woman's uterus. |
| (8) "Unborn child" means an offspring of human beings from conception until birth. | (9) "Unborn child" means an offspring of human beings from conception until birth. |
| Sec. 171.0411. APPLICABILITY TO MEDICAL ABORTION. This subchapter does not apply to an abortion with the intent to: | No equivalent provision, but see Sec. 171.061(1) above. |
| (1) save the life or preserve the health of an unborn child; | |
| (2) remove a dead, unborn child whose death was caused by spontaneous abortion; | |
| (3) remove an ectopic pregnancy; or | |
| (4) treat a maternal disease or illness for which a prescribed drug, medicine, or other substance is indicated. | |
| Sec. 171.042. ENFORCEMENT BY TEXAS MEDICAL BOARD. | Sec. 171.062. ENFORCEMENT BY TEXAS MEDICAL BOARD. |
| Sec. 171.043. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly give, sell, dispense, administer, provide, or prescribe an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless: | Sec. 171.063. DISTRIBUTION OF ABORTION-INDUCING DRUG. (a) A person may not knowingly give, sell, dispense, administer, provide, or prescribe an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless: |
| (1) the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician; | (1) the person who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug is a physician; and |
| (2) the physician administering the abortion-inducing drug administers the drug to the woman while both are present at an abortion facility licensed under Chapter 245; and | |
| (3) the provision, prescription, or administration of the abortion-inducing drug, except as provided by Subsection (a-1), satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug. | (2) except as otherwise provided by Subsection (a-1), the provision, prescription, or administration of the abortion-inducing drug satisfies the protocol tested and authorized by the United States Food and Drug Administration as outlined in the final printed label of the abortion-inducing drug. |
| (a-1) A person may provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the | (a-1) A person may provide, prescribe, or administer the abortion-inducing drug in the dosage amount prescribed by the clinical management guidelines defined by the |

American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(b) Before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, the physician must examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

(c) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug. At the follow-up visit, the physician must:

(1) confirm that the pregnancy is completely terminated; and

(2) assess the degree of bleeding.

(e) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (d). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(f) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician

American Congress of Obstetricians and Gynecologists Practice Bulletin as those guidelines existed on January 1, 2013.

(b) Before the physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug, the physician must examine the pregnant woman and document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy.

(c) The physician who gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug shall provide the pregnant woman with:

(1) a copy of the final printed label of that abortion-inducing drug; and

(2) a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the administration or use of the drug or ask health-related questions regarding the administration or use of the drug.

(d) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, must schedule a follow-up visit for the woman to occur not more than 14 days after the administration or use of the drug. At the follow-up visit, the physician must:

(1) confirm that the pregnancy is completely terminated; and

(2) assess the degree of bleeding.

(e) The physician who gives, sells, dispenses, administers, provides, or prescribes the abortion-inducing drug, or the physician's agent, shall make a reasonable effort to ensure that the woman returns for the scheduled follow-up visit under Subsection (d). The physician or the physician's agent shall document a brief description of any effort made to comply with this subsection, including the date, time, and name of the person making the effort, in the woman's medical record.

(f) If a physician gives, sells, dispenses, administers, provides, or prescribes an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion as authorized by this section and the physician

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| knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred. | knows that the woman experiences a serious adverse event, as defined by the MedWatch Reporting System, during or after the administration or use of the drug, the physician shall report the event to the United States Food and Drug Administration through the MedWatch Reporting System not later than the third day after the date the physician learns that the event occurred. |
| Sec. 171.044. ADMINISTRATIVE PENALTY. | Sec. 171.064. ADMINISTRATIVE PENALTY. |
| SECTION 3. Subsection (a), Section 245.010, Health and Safety Code, is amended. | SECTION 4. Same as engrossed version except for recitation. |
| No equivalent provision. | SECTION 5. Section 245.011(c), Health and Safety Code, is amended to read as follows:<br>(c) The report must include:<br>(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;<br>(2) the patient's year of birth, race, marital status, and state and county of residence;<br>(3) the type of abortion procedure;<br>(4) the date the abortion was performed;<br>(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;<br>(6) the probable post-fertilization age of the unborn child [~~period of gestation~~] based on the best medical judgment of the attending physician at the time of the procedure;<br>(7) the date, if known, of the patient's last menstrual cycle;<br>(8) the number of previous live births of the patient; and<br>(9) the number of previous induced abortions of the patient. |
| No equivalent provision. | SECTION 6. Section 164.052(a), Occupations Code, is amended to read as follows:<br>(a) A physician or an applicant for a license to practice medicine commits a prohibited practice if that person:<br>(1) submits to the board a false or misleading statement, document, or |

certificate in an application for a license;
(2) presents to the board a license, certificate, or diploma that was illegally or fraudulently obtained;
(3) commits fraud or deception in taking or passing an examination;
(4) uses alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;
(5) commits unprofessional or dishonorable conduct that is likely to deceive or defraud the public, as provided by Section 164.053, or injure the public;
(6) uses an advertising statement that is false, misleading, or deceptive;
(7) advertises professional superiority or the performance of professional service in a superior manner if that advertising is not readily subject to verification;
(8) purchases, sells, barters, or uses, or offers to purchase, sell, barter, or use, a medical degree, license, certificate, or diploma, or a transcript of a license, certificate, or diploma in or incident to an application to the board for a license to practice medicine;
(9) alters, with fraudulent intent, a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma;
(10) uses a medical license, certificate, or diploma, or a transcript of a medical license, certificate, or diploma that has been:
(A) fraudulently purchased or issued;
(B) counterfeited; or
(C) materially altered;
(11) impersonates or acts as proxy for another person in an examination required by this subtitle for a medical license;
(12) engages in conduct that subverts or attempts to subvert an examination process required by this subtitle for a medical license;
(13) impersonates a physician or permits another to use the person's license or certificate to practice medicine in this state;
(14) directly or indirectly employs a person whose license to practice medicine has been suspended, canceled, or revoked;
(15) associates in the practice of medicine with a person:
(A) whose license to practice medicine has been suspended, canceled, or revoked; or
(B) who has been convicted of the unlawful practice of medicine in this state or

elsewhere;
(16) performs or procures a criminal abortion, aids or abets in the procuring of a criminal abortion, attempts to perform or procure a criminal abortion, or attempts to aid or abet the performance or procurement of a criminal abortion;
(17) directly or indirectly aids or abets the practice of medicine by a person, partnership, association, or corporation that is not licensed to practice medicine by the board;
(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:
(A) the abortion is necessary to prevent the death of the woman;
(B) the viable unborn child has a severe, irreversible brain impairment; or
(C) the woman is diagnosed with a significant likelihood of suffering imminent severe, irreversible brain damage or imminent severe, irreversible paralysis; [~~or~~]
(19) performs an abortion on an unemancipated minor without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian; or
(20) performs or induces or attempts to perform or induce an abortion in violation of Subchapter C, Chapter 171, Health and Safety Code.

No equivalent provision.

SECTION 7. Section 164.055(b), Occupations Code, is amended to read as follows:
(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or

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| | renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002 or Subchapter C, Chapter 171, Health and Safety Code. |
| SECTION 4. Effective September 1, 2014, Subsection (c), Section 245.010, Health and Safety Code, is repealed. | SECTION 8. Substantially the same as engrossed version. |
| SECTION 5. This Act may not be construed to repeal, by implication or otherwise, Subdivision (18), Subsection (a), Section 164.052, Occupations Code, Section 170.002, Health and Safety Code, or any other provision of Texas law regulating or restricting abortion not specifically addressed by this Act. An abortion that complies with this Act but violates any other law is unlawful. An abortion that complies with another state law but violates this Act is unlawful as provided in this Act. | SECTION 9. Substantially the same as engrossed version. |
| SECTION 6. (a) If some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Texas law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.<br>(b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not | SECTION 10. (a) If some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Texas law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.<br>(b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not |

be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The legislature further declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional or to represent an undue burden.

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

SECTION 7. (a) The executive commissioner of the Health and Human Services Commission shall adopt the standards required by Section 245.010, Health and Safety Code, as amended by this Act, not later than January 1, 2014.

(b) A facility licensed under Chapter 245, Health and Safety Code, is not required to

be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The legislature further declares that it would have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional or to represent an undue burden.

(c) If Subchapter C, Chapter 171, Health and Safety Code, as added by this Act, prohibiting abortions performed on an unborn child 20 or more weeks after fertilization is found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which the subchapter can be constitutionally applied.

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

SECTION 11. Same as engrossed version.

comply with the standards adopted under Section 245.010, Health and Safety Code, as amended by this Act, before September 1, 2014.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

SECTION 12. Same as engrossed version.