

By: Rodríguez

S.B. No. 150

A BILL TO BE ENTITLED

AN ACT

relating to the Whole Woman's Health Act.

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

SECTION 1. (a) This Act shall be known as the Whole Woman's Health Act.

(b) The legislature finds that:

(1) comprehensive reproductive health care, including safe abortion, is a vital component of a woman's overall health and of her social and economic equality;

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

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

(4) the United States Supreme Court held more than 40 years ago in *Roe v. Wade* that access to an abortion is a constitutional right and that states may not prohibit abortion before viability;

(5) the right to an abortion has been upheld in multiple decisions issued by the United States Supreme Court, including in the 1992 case *Planned Parenthood v. Casey* and most recently in the landmark decision *Whole Woman's Health v.*

1 *Hellerstedt*;

2 (6) in *Whole Woman's Health*, the court held that the
3 United States Constitution "requires that courts consider the
4 burdens a law imposes on abortion access together with the benefits
5 those laws confer";

6 (7) in *Whole Woman's Health*, the court further held
7 that courts, "when determining the constitutionality of laws
8 regulating abortion procedures," must place "considerable weight
9 upon evidence . . . presented";

10 (8) applying the standard described in Subdivision (7)
11 of this section in *Whole Woman's Health*, the court struck down two
12 provisions of Chapter 1 (H.B. 2), Acts of the 83rd Legislature, 2nd
13 Called Session, 2013, that were designed to close abortion clinics
14 in the state and that the court concluded provided few, if any,
15 health benefits for women;

16 (9) Justice Ruth Bader Ginsburg concluded in *Whole*
17 *Woman's Health* given the safety of abortion, "it is beyond rational
18 belief that H.B. 2 could genuinely protect the health of women, and
19 certain that the law 'would simply make it more difficult for them
20 to obtain abortions'";

21 (10) Justice Ruth Bader Ginsburg also observed
22 abortion restrictions that "'do little or nothing for health, but
23 rather strew impediments to abortion' . . . cannot survive judicial
24 inspection";

25 (11) according to the American College of
26 Obstetricians and Gynecologists, American Medical Association,
27 American Academy of Family Physicians, and American Osteopathic

1 Association, which are leading public health organizations and
2 *amici curiae* for the petitioners in *Whole Woman's Health*,
3 "[w]omen's access to high-quality, evidence-based abortion care
4 should not be limited by laws enacted under the guise of patient
5 safety but that, in fact, harm women's health"; and

6 (12) the 334 restrictions on abortion providers and
7 their patients adopted nationally since 2011 and the 13 onerous
8 restrictions enacted in this state based on pretextual reasons are
9 just a systematic attempt to eliminate access to safe and legal
10 medical care.

11 (c) In accordance with the United States Constitution, it is
12 the intent of the legislature to prevent the enforcement of laws or
13 regulations that burden abortion access and do not provide
14 legitimate health benefits.

15 SECTION 2. The heading to Chapter 170, Health and Safety
16 Code, is amended to read as follows:

17 CHAPTER 170. PROHIBITED ACTS REGARDING ABORTION AND RIGHT TO
18 ABORTION

19 SECTION 3. Chapter 170, Health and Safety Code, is amended
20 by adding Sections 170.003 and 170.004 to read as follows:

21 Sec. 170.003. RIGHT TO ABORTION. (a) Every woman in this
22 state has the fundamental right to choose to obtain a safe and legal
23 abortion.

24 (b) This state or a political subdivision of this state may
25 not prohibit a woman from obtaining an abortion at any time
26 throughout her pregnancy if the termination is necessary, in the
27 professional judgment of a physician, to protect the woman's life

1 or health.

2 Sec. 170.004. PROHIBITED ABORTION LAWS; CIVIL ACTION;
3 WAIVER OF IMMUNITY. (a) Notwithstanding any other law, this state
4 or a political subdivision of this state may not enforce a law on
5 abortion that places a burden on a woman's access to abortion and
6 does not confer any legitimate health benefit to the woman.

7 (b) For purposes of Subsection (a), a law places a burden on
8 access to abortion if the law:

9 (1) forces abortion providers to close;

10 (2) increases the time a woman is required to wait to
11 obtain an abortion;

12 (3) requires a meaningful increase in the distance a
13 woman is required to travel to access care;

14 (4) requires medically unnecessary visits to a health
15 care facility;

16 (5) requires a health care provider to perform a
17 medical or health care service the provider would not otherwise
18 perform;

19 (6) increases risks to a woman's health;

20 (7) causes a meaningful increase in the cost of an
21 abortion procedure;

22 (8) is enacted solely for the purpose of stigmatizing
23 abortion patients and abortion providers; or

24 (9) has as its sole purpose or effect decreasing or
25 eliminating access to abortion.

26 (c) For purposes of Subsection (a), a law confers a
27 legitimate health benefit if the law:

1 (1) expands a woman's access to medical or health care
2 services; or

3 (2) increases an abortion patient's safety according
4 to evidence-based research.

5 (d) A person who is aggrieved by this state's or a political
6 subdivision's violation of Subsection (a) may bring a civil action
7 against this state or the political subdivision for injunctive
8 relief and damages incurred as a result of the violation. Sovereign
9 immunity of this state and governmental immunity of the political
10 subdivision from suit and to liability are waived and abolished to
11 the extent of liability created under this subsection.

12 SECTION 4. Section 171.003, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 171.003. PERSONS WHO MAY [~~PHYSICIAN TO~~] PERFORM
15 ABORTION. An abortion may be performed only by:

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

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

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

24 SECTION 5. Section 245.002, Health and Safety Code, is
25 amended by amending Subdivision (1) and adding Subdivision (3) to
26 read as follows:

27 (1) "Abortion" means an act or procedure performed

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

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

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

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

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

16 SECTION 6. Section 245.005(e), Health and Safety Code, is
17 amended to read as follows:

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

22 SECTION 7. The heading to Section 245.010, Health and
23 Safety Code, is amended to read as follows:

24 Sec. 245.010. PERSONS WHO MAY PERFORM ABORTION [~~MINIMUM~~
25 ~~STANDARDS~~].

26 SECTION 8. Section 245.010(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) Only a physician as defined by Subtitle B, Title 3,
2 Occupations Code, a nurse licensed under Subtitle E, Title 3,
3 Occupations Code, who is operating within the nurse's scope of
4 practice, or a physician assistant licensed under Chapter 204,
5 Occupations Code, who is operating within the physician assistant's
6 scope of practice may perform an abortion.

7 SECTION 9. Sections 245.011(a) and (b), Health and Safety
8 Code, are amended to read as follows:

9 (a) Each [~~A physician who performs an abortion at an~~]
10 abortion facility must [~~complete and~~] submit an annual [~~a monthly~~]
11 report to the commission [~~department~~] on each abortion performed
12 [~~by the physician~~] at the abortion facility. The report must be
13 submitted on a form provided by the commission [~~department~~].

14 (b) The report may not identify by any means the physician
15 performing the abortion or the patient.

16 SECTION 10. Section 164.052(a), Occupations Code, is
17 amended to read as follows:

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

20 (1) submits to the board a false or misleading
21 statement, document, or certificate in an application for a
22 license;

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

25 (3) commits fraud or deception in taking or passing an
26 examination;

27 (4) uses alcohol or drugs in an intemperate manner

1 that, in the board's opinion, could endanger a patient's life;

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

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

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

10 (8) purchases, sells, barter, or uses, or offers to
11 purchase, sell, barter, or use, a medical degree, license,
12 certificate, or diploma, or a transcript of a license, certificate,
13 or diploma in or incident to an application to the board for a
14 license to practice medicine;

15 (9) alters, with fraudulent intent, a medical license,
16 certificate, or diploma, or a transcript of a medical license,
17 certificate, or diploma;

18 (10) uses a medical license, certificate, or diploma,
19 or a transcript of a medical license, certificate, or diploma that
20 has been:

21 (A) fraudulently purchased or issued;

22 (B) counterfeited; or

23 (C) materially altered;

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

26 (12) engages in conduct that subverts or attempts to
27 subvert an examination process required by this subtitle for a

1 medical license;

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

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

8 (15) associates in the practice of medicine with a
9 person:

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

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

14 (16) performs or procures a criminal abortion, aids or
15 abets in the procuring of a criminal abortion, attempts to perform
16 or procure a criminal abortion, or attempts to aid or abet the
17 performance or procurement of a criminal abortion;

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

21 (18) performs an abortion on a woman who is pregnant
22 with a viable unborn child during the third trimester of the
23 pregnancy unless:

24 (A) the abortion is necessary to protect the
25 health or prevent the death of the woman;

26 (B) the viable unborn child has a severe,
27 irreversible brain impairment; or

1 (C) the woman is diagnosed with a significant
2 likelihood of suffering imminent severe, irreversible brain damage
3 or imminent severe, irreversible paralysis;

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

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

12 [~~(21) performs or induces or attempts to perform or~~
13 ~~induce an abortion in violation of Subchapter C, F, or G, Chapter~~
14 ~~171, Health and Safety Code].~~

15 SECTION 11. Section 164.055(b), Occupations Code, is
16 amended to read as follows:

17 (b) The sanctions provided by Subsection (a) are in addition
18 to any other grounds for refusal to admit persons to examination
19 under this subtitle or to issue a license or renew a license to
20 practice medicine under this subtitle. The criminal penalties
21 provided by Section 165.152 do not apply to a violation of Section
22 170.002 [~~, Health and Safety Code, or Subchapter C, F, or G, Chapter~~
23 ~~171], Health and Safety Code.~~

24 SECTION 12. The following provisions are repealed:

25 (1) Section 32.005, Health and Safety Code;

26 (2) Sections 171.0031, 171.004, 171.006, as added by
27 Chapter 4 (H.B. 13), Acts of the 85th Legislature, Regular Session,

1 2017, 171.006, as added by Chapter 9 (H.B. 215), Acts of the 85th
2 Legislature, Regular Session, 2017, 171.012, 171.0121, 171.0122,
3 171.0123, 171.013, 171.014, 171.015, 171.016, 171.017, and
4 171.018, Health and Safety Code;

5 (3) Subchapters C, D, F, and G, Chapter 171, Health and
6 Safety Code;

7 (4) Chapter 173, Health and Safety Code;

8 (5) Sections 241.007, 243.017, 245.002(4-a), 245.004,
9 as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature,
10 Regular Session, 2003, 245.010(a), 245.011(f) and (g), 245.0115,
11 245.0116, and 245.024, Health and Safety Code;

12 (6) Chapter 697, Health and Safety Code;

13 (7) Chapter 1218, Insurance Code;

14 (8) Subtitle M, Title 8, Insurance Code;

15 (9) Section 164.0551, Occupations Code; and

16 (10) Sections 48.03(a) and (d), Penal Code, as added
17 by Chapter 441 (S.B. 8), Acts of the 85th Legislature, Regular
18 Session, 2017.

19 SECTION 13. The changes in law made by this Act apply only
20 to an abortion performed on or after the effective date of this Act.
21 An abortion performed before the effective date of this Act is
22 governed by the law applicable to the abortion immediately before
23 the effective date of this Act, and that law is continued in effect
24 for that purpose.

25 SECTION 14. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

S.B. No. 150

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2019.