

1-1 By: Hughes, et al. S.B. No. 8
1-2 (In the Senate - Filed March 11, 2021; March 11, 2021, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 22, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 2; March 22, 2021,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Hughes	X		
1-10	Birdwell	X		
1-11	Campbell	X		
1-12	Hall	X		
1-13	Lucio	X		
1-14	Nelson	X		
1-15	Powell		X	
1-16	Schwertner	X		
1-17	Zaffirini		X	

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 8 By: Hughes

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to abortion, including abortions after detection of an
1-22 unborn child's heartbeat; authorizing a private civil right of
1-23 action.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. This Act shall be known as the Texas Heartbeat
1-26 Act.

1-27 SECTION 2. The legislature finds that the State of Texas
1-28 never repealed, either expressly or by implication, the state
1-29 statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113
1-30 (1973), that prohibit and criminalize abortion unless the mother's
1-31 life is in danger.

1-32 SECTION 3. Chapter 171, Health and Safety Code, is amended
1-33 by adding Subchapter H to read as follows:

1-34 SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

1-35 Sec. 171.201. DEFINITIONS. In this subchapter:

1-36 (1) "Fetal heartbeat" means cardiac activity or the
1-37 steady and repetitive rhythmic contraction of the fetal heart
1-38 within the gestational sac.

1-39 (2) "Gestational age" means the amount of time that
1-40 has elapsed from the first day of a woman's last menstrual period.

1-41 (3) "Gestational sac" means the structure comprising
1-42 the extraembryonic membranes that envelop the unborn child and that
1-43 is typically visible by ultrasound after the fourth week of
1-44 pregnancy.

1-45 (4) "Physician" means an individual licensed to
1-46 practice medicine in this state, including a medical doctor and a
1-47 doctor of osteopathic medicine.

1-48 (5) "Pregnancy" means the human female reproductive
1-49 condition that:

1-50 (A) begins with fertilization;

1-51 (B) occurs when the woman is carrying the
1-52 developing human offspring; and

1-53 (C) is calculated from the first day of the
1-54 woman's last menstrual period.

1-55 (6) "Standard medical practice" means the degree of
1-56 skill, care, and diligence that an obstetrician of ordinary
1-57 judgment, learning, and skill would employ in like circumstances.

1-58 (7) "Unborn child" means a human fetus or embryo in any
1-59 stage of gestation from fertilization until birth.

1-60 Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds,

2-1 according to contemporary medical research, that:

2-2 (1) fetal heartbeat has become a key medical predictor
2-3 that an unborn child will reach live birth;

2-4 (2) cardiac activity begins at a biologically
2-5 identifiable moment in time, normally when the fetal heart is
2-6 formed in the gestational sac;

2-7 (3) Texas has compelling interests from the outset of
2-8 a woman's pregnancy in protecting the health of the woman and the
2-9 life of the unborn child; and

2-10 (4) to make an informed choice about whether to
2-11 continue her pregnancy, the pregnant woman has a compelling
2-12 interest in knowing the likelihood of her unborn child surviving to
2-13 full-term birth based on the presence of cardiac activity.

2-14 Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT
2-15 REQUIRED; RECORD. (a) For the purposes of determining the presence
2-16 of a fetal heartbeat under this section, "standard medical
2-17 practice" includes employing the appropriate means of detecting the
2-18 heartbeat based on the estimated gestational age of the unborn
2-19 child and the condition of the woman and her pregnancy.

2-20 (b) Except as provided by Section 171.205, a physician may
2-21 not knowingly perform or induce an abortion on a pregnant woman
2-22 unless the physician has determined, in accordance with this
2-23 section, whether the woman's unborn child has a detectable fetal
2-24 heartbeat.

2-25 (c) In making a determination under Subsection (b), the
2-26 physician must use a test that is:

2-27 (1) consistent with the physician's good faith and
2-28 reasonable understanding of standard medical practice; and

2-29 (2) appropriate for the estimated gestational age of
2-30 the unborn child and the condition of the pregnant woman and her
2-31 pregnancy.

2-32 (d) A physician making a determination under Subsection (b)
2-33 shall record in the pregnant woman's medical record:

2-34 (1) the estimated gestational age of the unborn child;

2-35 (2) the method used to estimate the gestational age;

2-36 and

2-37 (3) the test used for detecting a fetal heartbeat,
2-38 including the date, time, and results of the test.

2-39 Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH
2-40 DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by
2-41 Section 171.205, a physician may not knowingly perform or induce an
2-42 abortion on a pregnant woman if the physician detected a fetal
2-43 heartbeat for the unborn child as required by Section 171.203 or
2-44 failed to perform a test to detect a fetal heartbeat.

2-45 (b) A physician does not violate this section if the
2-46 physician performed a test for a fetal heartbeat as required by
2-47 Section 171.203 and did not detect a fetal heartbeat.

2-48 (c) This section does not affect:

2-49 (1) the provisions of this chapter that restrict or
2-50 regulate an abortion by a particular method or during a particular
2-51 stage of pregnancy; or

2-52 (2) any other provision of state law that regulates or
2-53 prohibits abortion.

2-54 Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (a)
2-55 Section 171.204 does not apply if a physician believes a medical
2-56 emergency exists that prevents compliance with this subchapter.

2-57 (b) A physician who performs or induces an abortion under
2-58 circumstances described by Subsection (a) shall make written
2-59 notations in the pregnant woman's medical record of:

2-60 (1) the physician's belief that a medical emergency
2-61 necessitated the abortion; and

2-62 (2) the medical condition of the pregnant woman that
2-63 prevented compliance with this subchapter.

2-64 (c) A physician performing or inducing an abortion under
2-65 this section shall maintain in the physician's practice records a
2-66 copy of the notations made under Subsection (b).

2-67 Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This
2-68 subchapter does not create or recognize a right to abortion before a
2-69 fetal heartbeat is detected.

3-1 (b) This subchapter may not be construed to:
3-2 (1) authorize the initiation of a cause of action
3-3 against or the prosecution of a woman on whom an abortion is
3-4 performed or induced or attempted to be performed or induced in
3-5 violation of this subchapter;
3-6 (2) wholly or partly repeal, either expressly or by
3-7 implication, any other statute that regulates or prohibits
3-8 abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or
3-9 (3) restrict a political subdivision from regulating
3-10 or prohibiting abortion in a manner that is at least as stringent as
3-11 the laws of this state.
3-12 Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT. (a) The
3-13 requirements of this subchapter shall be enforced exclusively
3-14 through the private civil actions described in Section 171.208. No
3-15 enforcement of this subchapter, and no enforcement of Chapters 19
3-16 and 22, Penal Code, in response to violations of this subchapter,
3-17 may be taken or threatened by this state, a political subdivision, a
3-18 district or county attorney, or an executive or administrative
3-19 officer or employee of this state or a political subdivision
3-20 against any person, except as provided in Section 171.208.
3-21 (b) Subsection (a) may not be construed to:
3-22 (1) legalize the conduct prohibited by this subchapter
3-23 or by Chapter 6-1/2, Title 71, Revised Statutes;
3-24 (2) limit in any way or affect the availability of a
3-25 remedy established by Section 171.208; or
3-26 (3) limit the enforceability of any other laws that
3-27 regulate or prohibit abortion.
3-28 Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR
3-29 ABETTING VIOLATION. (a) Any person, other than an officer or
3-30 employee of a state or local governmental entity in this state, may
3-31 bring a civil action against any person who:
3-32 (1) performs or induces an abortion in violation of
3-33 this chapter; or
3-34 (2) knowingly engages in conduct that aids or abets
3-35 the performance or inducement of an abortion, including paying for
3-36 or reimbursing the costs of an abortion through insurance or
3-37 otherwise, if the abortion is performed or induced in violation of
3-38 this chapter, regardless of whether the person knew or should have
3-39 known that the abortion would be performed or induced in violation
3-40 of this chapter.
3-41 (b) If a claimant prevails in an action brought under this
3-42 section, the court shall award:
3-43 (1) injunctive relief sufficient to prevent the
3-44 defendant from violating this chapter or engaging in acts that aid
3-45 or abet violations of this chapter;
3-46 (2) statutory damages in an amount of not less than
3-47 \$10,000 for each abortion that the defendant performed or induced
3-48 in violation of this chapter, and for each abortion performed or
3-49 induced in violation of this chapter that the defendant aided or
3-50 abetted; and
3-51 (3) costs and attorney's fees.
3-52 (c) Notwithstanding Subsection (b), a court may not award
3-53 relief under this section if the defendant demonstrates that the
3-54 defendant previously paid statutory damages in a previous action
3-55 for that particular abortion performed or induced in violation of
3-56 this chapter, or for the particular conduct that aided or abetted an
3-57 abortion performed or induced in violation of this chapter.
3-58 (d) Notwithstanding Chapter 16, Civil Practice and Remedies
3-59 Code, a person may bring an action under this section not later than
3-60 the sixth anniversary of the date the cause of action accrues.
3-61 (e) Notwithstanding any other law, the following are not a
3-62 defense to an action brought under this section:
3-63 (1) ignorance or mistake of law;
3-64 (2) a defendant's belief that the requirements of this
3-65 chapter are unconstitutional or were unconstitutional;
3-66 (3) a defendant's reliance on any court decision that
3-67 has been overruled on appeal or by a subsequent court, even if that
3-68 court decision had not been overruled when the defendant engaged in
3-69 conduct that violates this chapter;

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

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

4-6 (6) the consent of the unborn child's mother to the
 4-7 abortion; or

4-8 (7) any claim that the enforcement of this chapter or
 4-9 the imposition of civil liability against the defendant will
 4-10 violate the constitutional rights of third parties, except as
 4-11 provided by Section 171.209.

4-12 (f) It is an affirmative defense if a person sued under
 4-13 Subsection (a)(2) reasonably believed, after conducting a
 4-14 reasonable investigation, that the physician performing or
 4-15 inducing the abortion had complied or would comply with this
 4-16 chapter. The defendant has the burden of proving the affirmative
 4-17 defense under this subsection by a preponderance of the evidence.

4-18 (g) This section may not be construed to impose liability on
 4-19 any speech or conduct protected by the First Amendment of the United
 4-20 States Constitution, as made applicable to the states through the
 4-21 United States Supreme Court's interpretation of the Fourteenth
 4-22 Amendment of the United States Constitution, or by Section 8,
 4-23 Article I, Texas Constitution.

4-24 (h) Notwithstanding any other law, this state, a state
 4-25 official, or a district or county attorney may not intervene in an
 4-26 action brought under this section. This subsection does not
 4-27 prohibit a person described by this subsection from filing an
 4-28 amicus curiae brief in the action.

4-29 (i) Notwithstanding any other law, a court may not award
 4-30 costs or attorney's fees under the Texas Rules of Civil Procedure or
 4-31 any other rule adopted by the supreme court under Section 22.004,
 4-32 Government Code, to a defendant in an action brought under this
 4-33 section.

4-34 Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE
 4-35 LIMITATIONS. (a) A defendant against whom an action is brought
 4-36 under Section 171.208 does not have standing to assert the rights of
 4-37 women seeking an abortion as a defense to liability under that
 4-38 section unless:

4-39 (1) the United States Supreme Court holds that the
 4-40 courts of this state must confer standing on that defendant to
 4-41 assert the third-party rights of women seeking an abortion in state
 4-42 court as a matter of federal constitutional law; or

4-43 (2) the defendant is an abortion provider, an employee
 4-44 of an abortion provider, or a physician who performs or induces
 4-45 abortions.

4-46 (b) A defendant in an action brought under Section 171.208
 4-47 may assert an affirmative defense to liability under this section
 4-48 only if:

4-49 (1) the defendant has standing to assert the
 4-50 third-party rights of women seeking an abortion in accordance with
 4-51 Subsection (a); and

4-52 (2) the defendant demonstrates that the relief sought
 4-53 by the claimant will impose an undue burden on women seeking an
 4-54 abortion.

4-55 (c) A court may not find an undue burden under Subsection
 4-56 (b) unless the defendant introduces evidence proving that:

4-57 (1) an award of relief will prevent an identifiable
 4-58 woman or an identifiable group of women from obtaining an abortion;
 4-59 or

4-60 (2) an award of relief will place a substantial
 4-61 obstacle in the path of an identifiable woman or an identifiable
 4-62 group of women who are seeking an abortion.

4-63 (d) A defendant may not establish an undue burden under this
 4-64 section by:

4-65 (1) merely demonstrating that an award of relief will
 4-66 prevent women from obtaining support or assistance, financial or
 4-67 otherwise, from others in their effort to obtain an abortion; or

4-68 (2) arguing or attempting to demonstrate that an award
 4-69 of relief against other defendants or other potential defendants

5-1 will impose an undue burden on women seeking an abortion.

5-2 (e) The affirmative defense under Subsection (b) is not
 5-3 available if the United States Supreme Court overrules *Roe v. Wade*,
 5-4 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
 5-5 (1992), regardless of whether the conduct on which the cause of
 5-6 action is based under Section 171.208 occurred before the Supreme
 5-7 Court overruled either of those decisions.

5-8 Sec. 171.210. CIVIL LIABILITY: VENUE. Notwithstanding any
 5-9 other law, including Section 15.002, Civil Practice and Remedies
 5-10 Code, a civil action brought under Section 171.208 shall be brought
 5-11 in:

5-12 (1) the county in which all or a substantial part of
 5-13 the events or omissions giving rise to the claim occurred;

5-14 (2) the county of residence for any one of the natural
 5-15 person defendants at the time the cause of action accrued;

5-16 (3) the county of the principal office in this state of
 5-17 any one of the defendants that is not a natural person; or

5-18 (4) the county of residence for the claimant if the
 5-19 claimant is a natural person residing in this state.

5-20 Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL
 5-21 IMMUNITY PRESERVED. (a) This section prevails over any conflicting
 5-22 law, including:

5-23 (1) the Uniform Declaratory Judgments Act; and

5-24 (2) Chapter 37, Civil Practice and Remedies Code.

5-25 (b) This state has sovereign immunity, a political
 5-26 subdivision has governmental immunity, and each officer and
 5-27 employee of this state or a political subdivision has official
 5-28 immunity in any action, claim, or counterclaim or any type of legal
 5-29 or equitable action that challenges the validity of any provision
 5-30 or application of this chapter, on constitutional grounds or
 5-31 otherwise.

5-32 (c) A provision of state law may not be construed to waive or
 5-33 abrogate an immunity described by Subsection (b) unless it
 5-34 expressly waives immunity under this section.

5-35 Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v. Jane*
 5-36 *L.*, 518 U.S. 137 (1996), in which in the context of determining the
 5-37 severability of a state statute regulating abortion the United
 5-38 States Supreme Court held that an explicit statement of legislative
 5-39 intent is controlling, it is the intent of the legislature that
 5-40 every provision, section, subsection, sentence, clause, phrase, or
 5-41 word in this chapter, and every application of the provisions in
 5-42 this chapter, are severable from each other.

5-43 (b) If any application of any provision in this chapter to
 5-44 any person, group of persons, or circumstances is found by a court
 5-45 to be invalid or unconstitutional, the remaining applications of
 5-46 that provision to all other persons and circumstances shall be
 5-47 severed and may not be affected. All constitutionally valid
 5-48 applications of this chapter shall be severed from any applications
 5-49 that a court finds to be invalid, leaving the valid applications in
 5-50 force, because it is the legislature's intent and priority that the
 5-51 valid applications be allowed to stand alone. Even if a reviewing
 5-52 court finds a provision of this chapter to impose an undue burden in
 5-53 a large or substantial fraction of relevant cases, the applications
 5-54 that do not present an undue burden shall be severed from the
 5-55 remaining provisions and shall remain in force, and shall be
 5-56 treated as if the legislature had enacted a statute limited to the
 5-57 persons, group of persons, or circumstances for which the statute's
 5-58 application does not present an undue burden.

5-59 (c) The legislature further declares that it would have
 5-60 enacted this chapter, and each provision, section, subsection,
 5-61 sentence, clause, phrase, or word, and all constitutional
 5-62 applications of this chapter, irrespective of the fact that any
 5-63 provision, section, subsection, sentence, clause, phrase, or word,
 5-64 or applications of this chapter, were to be declared
 5-65 unconstitutional or to represent an undue burden.

5-66 (d) If any provision of this chapter is found by any court to
 5-67 be unconstitutionally vague, then the applications of that
 5-68 provision that do not present constitutional vagueness problems
 5-69 shall be severed and remain in force.

6-1 (e) No court may decline to enforce the severability
 6-2 requirements of Subsections (a), (b), (c), and (d) on the ground
 6-3 that severance would rewrite the statute or involve the court in
 6-4 legislative or lawmaking activity. A court that declines to
 6-5 enforce or enjoins a state official from enforcing a statutory
 6-6 provision does not rewrite a statute, as the statute continues to
 6-7 contain the same words as before the court's decision. A judicial
 6-8 injunction or declaration of unconstitutionality:

6-9 (1) is nothing more than an edict prohibiting
 6-10 enforcement that may subsequently be vacated by a later court if
 6-11 that court has a different understanding of the requirements of the
 6-12 Texas Constitution or United States Constitution;

6-13 (2) is not a formal amendment of the language in a
 6-14 statute; and

6-15 (3) no more rewrites a statute than a decision by the
 6-16 executive not to enforce a duly enacted statute in a limited and
 6-17 defined set of circumstances.

6-18 (f) If any federal or state court declares unconstitutional
 6-19 or enjoins the enforcement of a provision in this chapter and fails
 6-20 to enforce the severability requirements of Subsections (a), (b),
 6-21 (c), (d), and (e), the executive commissioner shall:

6-22 (1) adopt rules that enforce the requirements
 6-23 described by this chapter to the maximum possible extent while
 6-24 avoiding the constitutional problems or other problems identified
 6-25 by the federal or state court; and

6-26 (2) issue notice of those rules, not later than the
 6-27 30th day after the date of the court ruling.

6-28 (g) If the executive commissioner fails to adopt the rules
 6-29 and issue notice under Subsection (f), a person may petition for a
 6-30 writ of mandamus requiring the executive commissioner to adopt the
 6-31 rules and issue notice.

6-32 SECTION 4. Chapter 30, Civil Practice and Remedies Code, is
 6-33 amended by adding Section 30.022 to read as follows:

6-34 Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS
 6-35 CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any
 6-36 person, including an entity, attorney, or law firm, who seeks
 6-37 declaratory or injunctive relief to prevent this state, a political
 6-38 subdivision, or any governmental entity or public official in this
 6-39 state from enforcing any statute, ordinance, rule, regulation, or
 6-40 any other type of law that regulates or restricts abortion or that
 6-41 limits taxpayer funding for individuals or entities that perform or
 6-42 promote abortions, in any state or federal court, or that
 6-43 represents any litigant seeking such relief in any state or federal
 6-44 court, is jointly and severally liable to pay the costs and
 6-45 attorney's fees of the prevailing party.

6-46 (b) For purposes of this section, a party is considered a
 6-47 prevailing party if a state or federal court:

6-48 (1) dismisses any claim or cause of action brought
 6-49 against the party that seeks the declaratory or injunctive relief
 6-50 described by Subsection (a), regardless of the reason for the
 6-51 dismissal; or

6-52 (2) enters judgment in the party's favor on any such
 6-53 claim or cause of action.

6-54 (c) Regardless of whether a prevailing party sought to
 6-55 recover costs or attorney's fees in the underlying action, a
 6-56 prevailing party under this section may bring a civil action to
 6-57 recover costs and attorney's fees against a person, including an
 6-58 entity, attorney, or law firm, that sought declaratory or
 6-59 injunctive relief described by Subsection (a) not later than the
 6-60 third anniversary of the date on which, as applicable:

6-61 (1) the dismissal or judgment described by Subsection
 6-62 (b) becomes final on the conclusion of appellate review; or

6-63 (2) the time for seeking appellate review expires.

6-64 (d) It is not a defense to an action brought under
 6-65 Subsection (c) that:

6-66 (1) a prevailing party under this section failed to
 6-67 seek recovery of costs or attorney's fees in the underlying action;
 6-68 or

6-69 (2) the court in the underlying action declined to

7-1 recognize or enforce the requirements of this section.

7-2 SECTION 5. Subchapter C, Chapter 311, Government Code, is
 7-3 amended by adding Section 311.036 to read as follows:

7-4 Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A
 7-5 statute that regulates or prohibits abortion may not be construed
 7-6 to repeal any other statute that regulates or prohibits abortion,
 7-7 either wholly or partly, unless the repealing statute explicitly
 7-8 states that it is repealing the other statute.

7-9 (b) A statute may not be construed to restrict a political
 7-10 subdivision from regulating or prohibiting abortion in a manner
 7-11 that is at least as stringent as the laws of this state unless the
 7-12 statute explicitly states that political subdivisions are
 7-13 prohibited from regulating or prohibiting abortion in the manner
 7-14 described by the statute.

7-15 (c) Every statute that regulates or prohibits abortion is
 7-16 severable in each of its applications to every person and
 7-17 circumstance. If any statute that regulates or prohibits abortion
 7-18 is found by any court to be unconstitutional, either on its face or
 7-19 as applied, then all applications of that statute that do not
 7-20 violate the constitutional rights of women seeking abortions shall
 7-21 be severed from the unconstitutional applications and shall remain
 7-22 enforceable, notwithstanding any other law.

7-23 SECTION 6. Subchapter A, Chapter 171, Health and Safety
 7-24 Code, is amended by adding Section 171.008 to read as follows:

7-25 Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion
 7-26 is performed or induced on a pregnant woman because of a medical
 7-27 emergency, the physician who performs or induces the abortion shall
 7-28 execute a written document that certifies the abortion is necessary
 7-29 due to a medical emergency and specifies the woman's medical
 7-30 condition requiring the abortion.

7-31 (b) A physician shall:

7-32 (1) place the document described by Subsection (a) in
 7-33 the pregnant woman's medical record; and

7-34 (2) maintain a copy of the document described by
 7-35 Subsection (a) in the physician's practice records.

7-36 (c) A physician who performs or induces an abortion on a
 7-37 pregnant woman shall:

7-38 (1) if the abortion is performed or induced to
 7-39 preserve the health of the pregnant woman, execute a written
 7-40 document that:

7-41 (A) specifies the medical condition the abortion
 7-42 is asserted to address; and

7-43 (B) provides the medical rationale for the
 7-44 physician's conclusion that the abortion is necessary to address
 7-45 the medical condition; or

7-46 (2) for an abortion other than an abortion described
 7-47 by Subdivision (1), specify in a written document that maternal
 7-48 health is not a purpose of the abortion.

7-49 (d) The physician shall maintain a copy of a document
 7-50 described by Subsection (c) in the physician's practice records.

7-51 SECTION 7. Section 171.012, Health and Safety Code, is
 7-52 amended by amending Subsection (a) and adding Subsection (g) to
 7-53 read as follows:

7-54 (a) Consent to an abortion is voluntary and informed only
 7-55 if:

7-56 (1) the physician who is to perform or induce the
 7-57 abortion informs the pregnant woman on whom the abortion is to be
 7-58 performed or induced of:

7-59 (A) the physician's name;

7-60 (B) the particular medical risks associated with
 7-61 the particular abortion procedure to be employed, including, when
 7-62 medically accurate:

7-63 (i) the risks of infection and hemorrhage;

7-64 (ii) the potential danger to a subsequent
 7-65 pregnancy and of infertility; and

7-66 (iii) the possibility of increased risk of
 7-67 breast cancer following an induced abortion and the natural
 7-68 protective effect of a completed pregnancy in avoiding breast
 7-69 cancer;

8-1 (C) the probable gestational age of the unborn
8-2 child at the time the abortion is to be performed or induced; and
8-3 (D) the medical risks associated with carrying
8-4 the child to term;

8-5 (2) the physician who is to perform or induce the
8-6 abortion or the physician's agent informs the pregnant woman that:

8-7 (A) medical assistance benefits may be available
8-8 for prenatal care, childbirth, and neonatal care;

8-9 (B) the father is liable for assistance in the
8-10 support of the child without regard to whether the father has
8-11 offered to pay for the abortion; and

8-12 (C) public and private agencies provide
8-13 pregnancy prevention counseling and medical referrals for
8-14 obtaining pregnancy prevention medications or devices, including
8-15 emergency contraception for victims of rape or incest;

8-16 (3) the physician who is to perform or induce the
8-17 abortion or the physician's agent:

8-18 (A) provides the pregnant woman with the printed
8-19 materials described by Section 171.014; and

8-20 (B) informs the pregnant woman that those
8-21 materials:

8-22 (i) have been provided by the commission
8-23 [~~Department of State Health Services~~];

8-24 (ii) are accessible on an Internet website
8-25 sponsored by the commission [~~department~~];

8-26 (iii) describe the unborn child and list
8-27 agencies that offer alternatives to abortion; and

8-28 (iv) include a list of agencies that offer
8-29 sonogram services at no cost to the pregnant woman;

8-30 (4) before any sedative or anesthesia is administered
8-31 to the pregnant woman and at least 24 hours before the abortion or
8-32 at least two hours before the abortion if the pregnant woman waives
8-33 this requirement by certifying that she currently lives 100 miles
8-34 or more from the nearest abortion provider that is a facility
8-35 licensed under Chapter 245 or a facility that performs more than 50
8-36 abortions in any 12-month period:

8-37 (A) the physician who is to perform or induce the
8-38 abortion or an agent of the physician who is also a sonographer
8-39 certified by a national registry of medical sonographers performs a
8-40 sonogram on the pregnant woman on whom the abortion is to be
8-41 performed or induced;

8-42 (B) the physician who is to perform or induce the
8-43 abortion displays the sonogram images in a quality consistent with
8-44 current medical practice in a manner that the pregnant woman may
8-45 view them;

8-46 (C) the physician who is to perform or induce the
8-47 abortion provides, in a manner understandable to a layperson, a
8-48 verbal explanation of the results of the sonogram images, including
8-49 a medical description of the dimensions of the embryo or fetus, the
8-50 presence of cardiac activity, and the presence of external members
8-51 and internal organs; [~~and~~]

8-52 (D) the physician who is to perform or induce the
8-53 abortion or an agent of the physician who is also a sonographer
8-54 certified by a national registry of medical sonographers makes
8-55 audible the heart auscultation for the pregnant woman to hear, if
8-56 present, in a quality consistent with current medical practice and
8-57 provides, in a manner understandable to a layperson, a simultaneous
8-58 verbal explanation of the heart auscultation; and

8-59 (E) if a fetal heartbeat is detected under
8-60 Section 171.203, the physician who is to perform or induce the
8-61 abortion informs the woman in writing of the statistical
8-62 probability of bringing the unborn child to term:

8-63 (i) to the best of the physician's
8-64 knowledge, based on the gestational age of the unborn child; or

8-65 (ii) as provided by commission rule;

8-66 (5) before receiving a sonogram under Subdivision
8-67 (4)(A) and before the abortion is performed or induced and before
8-68 any sedative or anesthesia is administered, the pregnant woman
8-69 completes and certifies with her signature an election form that

9-1 states as follows:

9-2 "ABORTION AND SONOGRAM ELECTION

9-3 (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY
9-4 SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN
9-5 PROVIDED AND EXPLAINED TO ME.

9-6 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
9-7 ABORTION.

9-8 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR
9-9 TO RECEIVING AN ABORTION.

9-10 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE
9-11 SONOGRAM IMAGES.

9-12 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE
9-13 HEARTBEAT.

9-14 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN
9-15 EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO
9-16 ONE OF THE FOLLOWING:

9-17 _____ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT,
9-18 INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN
9-19 REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN
9-20 REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT
9-21 RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

9-22 _____ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
9-23 WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY
9-24 CODE.

9-25 _____ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL
9-26 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC
9-27 PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

9-28 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND
9-29 WITHOUT COERCION.

9-30 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE
9-31 NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER
9-32 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE
9-33 THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

9-34 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR
9-35 MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED
9-36 UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS
9-37 IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS
9-38 AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION
9-39 PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

9-40 _____

9-41 _____
9-42 "SIGNATURE DATE";

9-43 (6) before the abortion is performed or induced, the
9-44 physician who is to perform or induce the abortion receives a copy
9-45 of the signed, written certification required by Subdivision (5);
9-46 and

9-47 (7) the pregnant woman is provided the name of each
9-48 person who provides or explains the information required under this
9-49 subsection.

9-50 (g) The executive commissioner may adopt rules that specify
9-51 the information required under Subsection (a)(4)(E) regarding the
9-52 statistical probability of bringing an unborn child to term based
9-53 on the gestational age of the child. The information in the rules
9-54 must be based on available medical evidence.

9-55 SECTION 8. Section 245.011(c), Health and Safety Code, is
9-56 amended to read as follows:

9-57 (c) The report must include:

9-58 (1) whether the abortion facility at which the
9-59 abortion is performed is licensed under this chapter;

9-60 (2) the patient's year of birth, race, marital status,
9-61 and state and county of residence;

9-62 (3) the type of abortion procedure;

9-63 (4) the date the abortion was performed;

9-64 (5) whether the patient survived the abortion, and if
9-65 the patient did not survive, the cause of death;

9-66 (6) the probable post-fertilization age of the unborn
9-67 child based on the best medical judgment of the attending physician
9-68 at the time of the procedure;

9-69 (7) the date, if known, of the patient's last menstrual

- 10-1 cycle;
- 10-2 (8) the number of previous live births of the patient;
- 10-3 [~~and~~]
- 10-4 (9) the number of previous induced abortions of the
- 10-5 patient;
- 10-6 (10) whether the abortion was performed or induced
- 10-7 because of a medical emergency and any medical condition of the
- 10-8 pregnant woman that required the abortion;
- 10-9 (11) whether the physician made a determination of the
- 10-10 presence of a fetal heartbeat in accordance with Section 171.203;
- 10-11 and
- 10-12 (12) whether the physician performed or induced the
- 10-13 abortion under circumstances described by Section 171.205.

10-14 SECTION 9. Every provision in this Act and every
 10-15 application of the provision in this Act are severable from each
 10-16 other. If any provision or application of any provision in this Act
 10-17 to any person, group of persons, or circumstance is held by a court
 10-18 to be invalid, the invalidity does not affect the other provisions
 10-19 or applications of this Act.

10-20 SECTION 10. The change in law made by this Act applies only
 10-21 to an abortion performed or induced on or after the effective date
 10-22 of this Act.

10-23 SECTION 11. This Act takes effect September 1, 2021.

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