

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

	X	
	:	
WHOLE WOMAN’S HEALTH, et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
v.	:	CASE NO. 1:16-CV-01300-SS
	:	
	:	
JOHN HELLERSTEDT, M.D.,	:	
	:	
Defendant.	:	
	:	
	:	
	X	

**PLAINTIFFS’ MOTION TO LIFT STAY**

Plaintiffs respectfully request that this Court lift the stay currently in effect, and allow preliminary injunction proceedings to resume against Texas Senate Bill 8 (“SB 8”), signed into law two days ago, and its implementing regulations.

**I. CASE HISTORY**

The present case is a constitutional challenge to amendments to Texas regulations governing “special waste from health care-related facilities” (the “Amendments”), 25 Tex. Admin. Code §§ 1.131-1.137, which were published in the Texas Register on December 9, 2016, by the Texas Health and Human Services Commission (“HHSC”) on behalf of the Texas Department of State Health Services (“DSHS”) (ECF No. 49 at 7). The Amendments generally define a new category of “pathological waste” called “fetal tissue,” and impose restrictions on the methods by which healthcare providers are allowed to dispose of “fetal tissue.” (ECF No. 49 at 5-7). Plaintiffs—Texas healthcare providers and facilities who provide pregnancy-related medical

care—moved for a preliminary injunction against the enforcement of the Amendments, which this Court granted on January 27, 2017. (ECF Nos. 49 & 50.)

Defendant—Dr. John Hellerstedt, the Commissioner of DSHS, charged with enforcing the Amendments—filed a notice of appeal on February 23 (ECF No. 56), and on the same day moved this Court to stay proceedings pending the resolution of the appeal of the preliminary injunction (ECF No. 57). Defendant’s motion argued that allowing the Court of Appeals to review this Court’s application of the “undue burden” standard first applied in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), to the preliminary record, might have a substantial impact on the litigation going forward, and so a stay would reduce the chances of duplicative and potentially unnecessary litigation. (ECF No. 57 at 2-5). Plaintiffs opposed the motion to stay, primarily urging the interests of justice as laid out in caselaw, and noting that, “[t]he Texas Legislature is currently considering legislation to codify into statute a somewhat different version of the interment or cremation requirement than that included in the Amendments,” from which Plaintiffs could not seek relief, were it passed while a stay was in effect. (ECF No. 63 at 7-8). The Court granted the motion, ruling that it would be better to allow “serious legal questions” impacting the litigation of the case’s merits to be answered by the Court of Appeals before proceeding, thus avoiding potentially unnecessary litigation, and also that the parties would not be harmed by a stay. (ECF No. 66 at 1-4).

The Record on Appeal has been transmitted to the Fifth Circuit Court of Appeals, and Defendant/Appellant filed his opening brief on May 30, 2017. Plaintiffs/Appellees’ brief is due on June 29, and Defendant/Appellant’s reply brief would be filed no later than July 13. Argument, which is generally scheduled 60 days in advance, has not been set. Concurrently herewith,

Plaintiffs have filed in the Fifth Circuit a motion to Dismiss the Appeal and to Stay Further Briefing Under Fifth Circuit Rule 27.1.3, for reasons discussed *infra*.

## **II. THE PASSAGE OF SB 8**

On June 6, 2017, Texas Governor Greg Abbott signed SB 8, attached hereto as Exhibit A, into law. Chapter 697 of SB 8 establishes a regulatory scheme for “embryonic and fetal tissue remains” that is different from, and partially inconsistent with, the Amendments. SB 8, like the Amendments, provides for a limited number of methods of disposal. However, SB 8’s definition of “embryonic and fetal tissue remains” is different from the Amendments, as it includes only “an embryo, a fetus, body parts, or organs from a pregnancy,” omitting “other tissue from a pregnancy” from its definition. (Ex. A at 14-15). Also contrary to the Amendments, which define “fetal remains” as a form of “pathological waste,” SB 8 states, “[e]mbryonic and fetal tissue remains are not pathological waste under state law.” *Id.* at 15. SB 8 also states that ashes “may not be placed in a landfill,” in contrast to the Amendments, which do not mention landfills. (*Id.* at 16). Finally, SB 8 provides for the “establish[ment] and maintain[ance of] a registry of participating funeral homes and cemeteries willing to provide free common burial or low-cost private burial [and] private nonprofit organizations that register with the department to provide financial assistance,” which are not part of the Amendments. (*Id.* at 16-17).

SB 8 also includes a “Fiscal Note,” from the Legislature’s Budget Board, attached hereto as Exhibit B, which reports on a survey of “costs associated with implementing the provisions of the bill” in public hospitals, and provides further evidence regarding compliance costs. Ex. B at 2. The Fiscal Notes details survey responses from two hospitals: one indicates costs “per year per hospital range between \$218,400-\$655,200,” and the other states “a cost of \$1,060 for cremation and \$1,400 for burial,” which would have applied to one hundred fetuses over a twelve-month

period. *Id.* These six-figure sums reported in the Fiscal Note are consistent with some of the conflicting evidence about cost discussed in this Court’s January 27, 2017 Order, (ECF No. 49 at 18- 21), but also inconsistent with some of that evidence.

SB 8’s effective date is September 1, 2017. (Ex. A at 26). The bill also mandates HHSC to establish a “grant program” to provide financial assistance “for costs associated with disposition of “embryonic and fetal tissue remains” by October 1, 2017; and implementing regulations for “disposal of embryonic and fetal tissue remains” by no later than December 1, 2017. (*Id.* at 23). SB 8 also provides that “the disposition of embryonic and fetal tissue remains that occurs before February 1, 2018, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.” (*Id.* at 24).

### **III. PLAINTIFFS WILL LOSE THE PROTECTION OF THE PRELIMINARY INJUNCTION UNLESS THE COURT’S OPINION IS AMENDED; THE COURT’S OPINION WILL ALSO BE SUPERSEDED AND THUS UNREVIEWABLE ON APPEAL**

SB 8 was not in existence when this Court issued its preliminary injunction, and so was not considered by the parties. Accordingly, the preliminary injunction currently in force does not encompass SB 8. Because SB 8 imposes unconstitutional burdens on Plaintiffs and on their patients’ access to pregnancy-related medical care, Plaintiffs will need to seek to modify the preliminary injunction to address those burdens.

Further, many of this Court’s findings of fact and conclusions of law regarding the Amendments relied on language that SB 8 requires be repealed. For example, DSHS’s vacillation during proceedings regarding whether “fetal remains” were governed by any or all of the laws applicable to “pathological waste” or to “human remains” supported this Court’s ruling that the Amendments were unconstitutionally vague, since it was unclear what permits vendors would need to obtain before being able to legally dispose of “fetal tissue.” ECF No. 49 at 12-13. SB 8, in

contrast, states “embryonic and fetal tissue remains are not pathological waste under state law.” Ex. A at 15. This differs from the plain text of the Amendments, which defined “fetal remains” as “pathological waste.” ECF No. 1-1 at 27. Accordingly, the Court may want to revisit this part of the Court’s vagueness ruling as to the Amendments in light of SB 8.

SB 8 also applies to a seemingly narrower scope of institutions (any “health care facility in this state that provides health or medical care to a pregnant woman”), Ex. A at 15, than the Amendments (“health-care facilities”), ECF No. 1-1 at 2. SB 8 also mandates that DSHS establish registries of cemeteries, funeral homes, and crematoriums willing to provide reduced-cost services, and a grant program. These changes may alter the Amendments’ impact. Finally, SB 8 requires further rulemaking, to be finished by December 1, 2017, which at a minimum will necessarily repeal the provisions of the Amendments that conflict with the statute, and implement the new requirements that do not exist in SB 8, such as the registries and the grant program. Ex. A at 17-22. The current preliminary injunction will not encompass these new changes to the Amendments.

Further, although SB 8 has not remedied the basic constitutional problem inherent in the State forcing non-medical methods of tissue disposal on non-consenting people seeking pregnancy related medical care, the changed facts brought about by the changed law, and possibly its implementing regulations, may require the Court to hear new evidence and to update its findings of fact as used in the undue burden balancing analysis.

To seek to modify the preliminary injunction, Plaintiffs respectfully move this Court to **LIFT THE STAY**. Should the present motion to lift the Stay be granted, Plaintiffs expect to file a supplemental complaint and a second motion for a preliminary injunction. Before filing those papers, however, Plaintiffs respectfully request a **STATUS CONFERENCE** with the Court to discuss the case, including a briefing schedule; whether DSHS intends to impose any obligations

on Plaintiffs under Chapter 697 of SB 8 or the new regulations before February 1, 2018 (which would affect the briefing schedule); the necessity for any discovery; and the date for another preliminary injunction hearing, if necessary.

Dated: June 8, 2017

Respectfully submitted,

/s/ Patrick J. O'Connell

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2017, I electronically filed a copy of the above document with the Clerk of the Court by using the Court's CM/ECF system, which will send a notification to the counsel of record.

/s/ Patrick J. O'Connell

Patrick J. O'Connell

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	:	
	:	
	X	

**[PROPOSED] ORDER**

This Court, having considered Plaintiffs' Motion to Lift Stay, and Defendant's response in opposition, and for good cause shown, hereby GRANTS Plaintiffs' motion.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion to Lift Stay [#68] is GRANTED;

IT IS FURTHER ORDERED the STAY IS LIFTED; and

IT IS FINALLY ORDERED that the parties shall participate in a TELEPHONE CONFERENCE with this Court on the \_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_. Counsel for Plaintiffs shall be responsible for arranging the call.

SIGNED this the \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
SAM SPARKS  
UNITED STATES DISTRICT JUDGE



# **Exhibit A**

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AN ACT

relating to certain prohibited abortions and the treatment and disposition of a human fetus, human fetal tissue, and embryonic and fetal tissue remains; creating a civil cause of action; imposing a civil penalty; creating criminal offenses.

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

SECTION 1. Section 33.001(1), Family Code, is amended to read as follows:

(1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code ~~[means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant, with the intention that the termination of the pregnancy by those means will with reasonable likelihood cause the death of the fetus]~~. This definition, as applied in this chapter, ~~[applies only to an unemancipated minor known by the attending physician to be pregnant and]~~ may not be construed to limit a minor's access to contraceptives.

SECTION 2. Section 161.006(b), Family Code, is amended to read as follows:

(b) In this code, "abortion" has the meaning assigned by Section 245.002, Health and Safety Code ~~[means an intentional expulsion of a human fetus from the body of a woman induced by any means for the purpose of causing the death of the fetus]~~.

SECTION 3. Section 170.001(1), Health and Safety Code, is

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1 amended to read as follows:

2 (1) "Abortion" has the meaning assigned by Section  
 3 245.002 ~~[means an act involving the use of an instrument, medicine,~~  
 4 ~~drug, or other substance or device developed to terminate the~~  
 5 ~~pregnancy of a woman if the act is done with an intention other than~~  
 6 ~~to:~~

7 ~~[(A) increase the probability of a live birth of~~  
 8 ~~the unborn child of the woman;~~

9 ~~[(B) preserve the life or health of the child; or~~

10 ~~[(C) remove a dead fetus].~~

11 SECTION 4. Section 171.002(1), Health and Safety Code, is  
 12 amended to read as follows:

13 (1) "Abortion" has the meaning assigned by Section  
 14 245.002 ~~[means the use of any means to terminate the pregnancy of a~~  
 15 ~~female known by the attending physician to be pregnant with the~~  
 16 ~~intention that the termination of the pregnancy by those means~~  
 17 ~~will, with reasonable likelihood, cause the death of the fetus].~~

18 SECTION 5. Section 171.061(1), Health and Safety Code, is  
 19 amended to read as follows:

20 (1) "Abortion" has the meaning assigned by Section  
 21 245.002. This definition, as applied in this subchapter, may not be  
 22 construed to apply to an act done with the intent to ~~[means the act~~  
 23 ~~of using, administering, prescribing, or otherwise providing an~~  
 24 ~~instrument, a drug, a medicine, or any other substance, device, or~~  
 25 ~~means with the intent to terminate a clinically diagnosable~~  
 26 ~~pregnancy of a woman and with knowledge that the termination by~~  
 27 ~~those means will, with reasonable likelihood, cause the death of~~

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~~the woman's unborn child. 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.

SECTION 6. Chapter 171, Health and Safety Code, is amended by adding Subchapters F and G to read as follows:

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, deliberately and intentionally vaginally delivers a living fetus until:

(i) for a head-first presentation, the entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother; and

(B) performs the overt act described in Paragraph (A), other than completion of delivery, that kills the partially delivered living fetus.

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

4           Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A  
5 physician or other person may not knowingly perform a partial-birth  
6 abortion.

7           (b) Subsection (a) does not apply to a physician who  
8 performs a partial-birth abortion that is necessary to save the  
9 life of a mother whose life is endangered by a physical disorder,  
10 physical illness, or physical injury, including a life-endangering  
11 physical condition caused by or arising from the pregnancy.

12           Sec. 171.103. CRIMINAL PENALTY. A person who violates  
13 Section 171.102 commits an offense. An offense under this section  
14 is a state jail felony.

15           Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by  
16 Subsection (b), the father of the fetus or a parent of the mother of  
17 the fetus, if the mother is younger than 18 years of age at the time  
18 of the partial-birth abortion, may bring a civil action to obtain  
19 appropriate relief, including:

20                   (1) money damages for physical injury, mental anguish,  
21 and emotional distress; and

22                   (2) exemplary damages equal to three times the cost of  
23 the partial-birth abortion.

24           (b) A person may not bring or maintain an action under this  
25 section if:

26                   (1) the person consented to the partial-birth  
27 abortion; or

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1           (2) the person's criminally injurious conduct resulted  
2 in the pregnancy.

3           Sec. 171.105. HEARING. (a) A physician who is the subject  
4 of a criminal or civil action for a violation of Section 171.102 may  
5 request a hearing before the Texas Medical Board on whether the  
6 physician's conduct was necessary to save the life of a mother whose  
7 life was endangered by a physical disorder, physical illness, or  
8 physical injury, including a life-endangering physical condition  
9 caused by or arising from the pregnancy.

10           (b) The board's findings under Subsection (a) are  
11 admissible in any court proceeding against the physician arising  
12 from that conduct. On the physician's motion, the court shall delay  
13 the beginning of a criminal or civil trial for not more than 60 days  
14 for the hearing to be held under Subsection (a).

15           Sec. 171.106. APPLICABILITY. A woman on whom a  
16 partial-birth abortion is performed or attempted in violation of  
17 this subchapter may not be prosecuted under this subchapter or for  
18 conspiracy to commit a violation of this subchapter.

19           SUBCHAPTER G. DISMEMBERMENT ABORTIONS

20           Sec. 171.151. DEFINITION. In this subchapter,  
21 "dismemberment abortion" means an abortion in which a person, with  
22 the purpose of causing the death of an unborn child, dismembers the  
23 living unborn child and extracts the unborn child one piece at a  
24 time from the uterus through the use of clamps, grasping forceps,  
25 tongs, scissors, or a similar instrument that, through the  
26 convergence of two rigid levers, slices, crushes, or grasps, or  
27 performs any combination of those actions on, a piece of the unborn

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1 child's body to cut or rip the piece from the body. The term does  
2 not include an abortion that uses suction to dismember the body of  
3 an unborn child by sucking pieces of the unborn child into a  
4 collection container. The term includes a dismemberment abortion  
5 that is used to cause the death of an unborn child and in which  
6 suction is subsequently used to extract pieces of the unborn child  
7 after the unborn child's death.

8 Sec. 171.152. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A  
9 person may not intentionally perform a dismemberment abortion  
10 unless the dismemberment abortion is necessary in a medical  
11 emergency.

12 (b) A woman on whom a dismemberment abortion is performed,  
13 an employee or agent acting under the direction of a physician who  
14 performs a dismemberment abortion, or a person who fills a  
15 prescription or provides equipment used in a dismemberment abortion  
16 does not violate Subsection (a).

17 Sec. 171.153. CRIMINAL PENALTY. (a) A person who violates  
18 Section 171.152 commits an offense.

19 (b) An offense under this section is a state jail felony.

20 Sec. 171.154. CONSTRUCTION OF SUBCHAPTER. (a) This  
21 subchapter shall be construed, as a matter of state law, to be  
22 enforceable to the maximum possible extent consistent with but not  
23 further than federal constitutional requirements, even if that  
24 construction is not readily apparent, as such constructions are  
25 authorized only to the extent necessary to save the subchapter from  
26 judicial invalidation. Judicial reformation of statutory language  
27 is explicitly authorized only to the extent necessary to save the

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1 statutory provision from invalidity.

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

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

21 (d) This subchapter may not be construed to:

22 (1) authorize the prosecution of or a cause of action  
23 to be brought against a woman on whom an abortion is performed or  
24 induced in violation of this subchapter; or

25 (2) create or recognize a right to abortion or a right  
26 to a particular method of abortion.

27 SECTION 7. Subtitle H, Title 2, Health and Safety Code, is



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1 amended by adding Chapter 173 to read as follows:

2 CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

3 Sec. 173.001. DEFINITIONS. In this chapter:

4 (1) "Authorized facility" means:

5 (A) a hospital licensed under Chapter 241;

6 (B) a hospital maintained or operated by this  
7 state or an agency of this state;

8 (C) an ambulatory surgical center licensed under  
9 Chapter 243; or

10 (D) a birthing center licensed under Chapter 244.

11 (2) "Human fetal tissue" means any gestational human  
12 organ, cell, or tissue from an unborn child. The term does not  
13 include:

14 (A) supporting cells or tissue derived from a  
15 pregnancy or associated maternal tissue that is not part of the  
16 unborn child; or

17 (B) the umbilical cord or placenta, provided that  
18 the umbilical cord or placenta is not derived from an elective  
19 abortion.

20 Sec. 173.002. APPLICABILITY. This chapter does not apply  
21 to:

22 (1) human fetal tissue obtained for diagnostic or  
23 pathological testing;

24 (2) human fetal tissue obtained for a criminal  
25 investigation;

26 (3) human fetal tissue or human tissue obtained during  
27 pregnancy or at delivery of a child, provided the tissue is obtained

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1 by an accredited public or private institution of higher education  
2 for use in research approved by an institutional review board or  
3 another appropriate board, committee, or body charged with  
4 oversight applicable to the research; or

5 (4) cell lines derived from human fetal tissue or  
6 human tissue existing on September 1, 2017, that are used by an  
7 accredited public or private institution of higher education in  
8 research approved by an institutional review board or another  
9 appropriate board, committee, or body charged with oversight  
10 applicable to the research.

11 Sec. 173.003. ENFORCEMENT. (a) The department shall  
12 enforce this chapter.

13 (b) The attorney general, on request of the department or a  
14 local law enforcement agency, may assist in the investigation of a  
15 violation of this chapter.

16 Sec. 173.004. PROHIBITED DONATION. A person may not donate  
17 human fetal tissue except as authorized by this chapter.

18 Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only  
19 an authorized facility may donate human fetal tissue. An  
20 authorized facility may donate human fetal tissue only to an  
21 accredited public or private institution of higher education for  
22 use in research approved by an institutional review board or  
23 another appropriate board, committee, or body charged with  
24 oversight applicable to the research.

25 (b) An authorized facility may not donate human fetal tissue  
26 obtained from an elective abortion.

27 Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized

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1 facility may not donate human fetal tissue under this chapter  
2 unless the facility has obtained the written, voluntary, and  
3 informed consent of the woman from whose pregnancy the fetal tissue  
4 is obtained. The consent must be provided on a standard form  
5 prescribed by the department.

6 Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an  
7 offense if the person:

8 (1) offers a woman monetary or other consideration to:

9 (A) have an abortion for the purpose of donating  
10 human fetal tissue; or

11 (B) consent to the donation of human fetal  
12 tissue; or

13 (2) knowingly or intentionally solicits or accepts  
14 tissue from a fetus gestated solely for research purposes.

15 (b) An offense under this section is a Class A misdemeanor  
16 punishable by a fine of not more than \$10,000.

17 (c) With the consent of the appropriate local county or  
18 district attorney, the attorney general has concurrent  
19 jurisdiction with that consenting local prosecutor to prosecute an  
20 offense under this section.

21 Sec. 173.008. RECORD RETENTION. Unless another law  
22 requires a longer period of record retention, an authorized  
23 facility may not dispose of any medical record relating to a woman  
24 who consents to the donation of human fetal tissue before:

25 (1) the seventh anniversary of the date consent was  
26 obtained under Section 173.006; or

27 (2) if the woman was younger than 18 years of age on

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1 the date consent was obtained under Section 173.006, the later of:

2 (A) the woman's 23rd birthday; or

3 (B) the seventh anniversary of the date consent  
 4 was obtained.

5 Sec. 173.009. ANNUAL REPORT. An authorized facility that  
 6 donates human fetal tissue under this chapter shall submit an  
 7 annual report to the department that includes for each donation:

8 (1) the specific type of fetal tissue donated; and

9 (2) the accredited public or private institution of  
 10 higher education that received the donation.

11 SECTION 8. Section 245.002, Health and Safety Code, is  
 12 amended by amending Subdivisions (1) and (4-a) and adding  
 13 Subdivision (4-b) to read as follows:

14 (1) "Abortion" means the act of using or prescribing  
 15 an instrument, a drug, a medicine, or any other substance, device,  
 16 or means with the intent to cause the death of an unborn child of a  
 17 woman known to be pregnant ~~[an act or procedure performed after~~  
 18 ~~pregnancy has been medically verified and with the intent to cause~~  
 19 ~~the termination of a pregnancy other than for the purpose of either~~  
 20 ~~the birth of a live fetus or removing a dead fetus].~~ The term does  
 21 not include birth control devices or oral contraceptives. An act is  
 22 not an abortion if the act is done with the intent to:

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

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

27 (C) remove an ectopic pregnancy.

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1           (4-a) "Ectopic pregnancy" means the implantation of a  
 2 fertilized egg or embryo outside of the uterus.

3           (4-b) "Executive commissioner" means the executive  
 4 commissioner of the Health and Human Services Commission.

5           SECTION 9. Section 245.005(e), Health and Safety Code, is  
 6 amended to read as follows:

7           (e) As a condition for renewal of a license, the licensee  
 8 must submit to the department the annual license renewal fee and an  
 9 annual report~~[, including the report required under Section~~  
 10 ~~245.011]~~.

11          SECTION 10. The heading to Section 245.011, Health and  
 12 Safety Code, is amended to read as follows:

13          Sec. 245.011. PHYSICIAN REPORTING REQUIREMENTS; CRIMINAL  
 14 PENALTY.

15          SECTION 11. Section 245.011, Health and Safety Code, is  
 16 amended by amending Subsections (a), (b), (d), and (e) and adding  
 17 Subsections (f) and (g) to read as follows:

18          (a) A physician who performs an abortion at an ~~[Each]~~  
 19 abortion facility must complete and submit a monthly ~~[an annual]~~  
 20 report to the department on each abortion ~~[that is]~~ performed by the  
 21 physician at the abortion facility. The report must be submitted on  
 22 a form provided by the department.

23          (b) The report may not identify by any means ~~[the physician~~  
 24 ~~performing the abortion or]~~ the patient.

25          (d) Except as provided by Section 245.023, all information  
 26 and records held by the department under this chapter are  
 27 confidential and are not open records for the purposes of Chapter

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1 552, Government Code. That information may not be released or made  
2 public on subpoena or otherwise, except that release may be made:

3 (1) for statistical purposes, but only if a person,  
4 patient, physician performing an abortion, or abortion facility is  
5 not identified;

6 (2) with the consent of each person, patient,  
7 physician, and abortion facility identified in the information  
8 released;

9 (3) to medical personnel, appropriate state agencies,  
10 or county and district courts to enforce this chapter; or

11 (4) to appropriate state licensing boards to enforce  
12 state licensing laws.

13 (e) A person commits an offense if the person violates  
14 Subsection (b), (c), or (d) [this section]. An offense under this  
15 subsection is a Class A misdemeanor.

16 (f) Not later than the 15th day of each month, a physician  
17 shall submit to the department the report required by this section  
18 for each abortion performed by the physician at an abortion  
19 facility in the preceding calendar month.

20 (g) The department shall establish and maintain a secure  
21 electronic reporting system for the submission of the reports  
22 required by this section. The department shall adopt procedures to  
23 enforce this section and to ensure that only physicians who perform  
24 one or more abortions during the preceding calendar month are  
25 required to file the reports under this section for that month.

26 SECTION 12. Chapter 245, Health and Safety Code, is amended  
27 by adding Sections 245.0115 and 245.0116 to read as follows:

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1       Sec. 245.0115. NOTIFICATION. Not later than the seventh  
2 day after the date the report required by Section 245.011 is due,  
3 the commissioner of state health services shall notify the Texas  
4 Medical Board of a violation of that section.

5       Sec. 245.0116. DEPARTMENT REPORT. (a) The department  
6 shall publish on its Internet website a monthly report containing  
7 aggregate data of the information in the reports submitted under  
8 Section 245.011.

9       (b) The department's monthly report may not identify by any  
10 means an abortion facility, a physician performing the abortion, or  
11 a patient.

12       SECTION 13. Subtitle B, Title 8, Health and Safety Code, is  
13 amended by adding Chapter 697 to read as follows:

14       CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

15       Sec. 697.001. PURPOSE. The purpose of this chapter is to  
16 express the state's profound respect for the life of the unborn by  
17 providing for a dignified disposition of embryonic and fetal tissue  
18 remains.

19       Sec. 697.002. DEFINITIONS. In this chapter:

20               (1) "Cremation" means the irreversible process of  
21 reducing remains to bone fragments through direct flame, extreme  
22 heat, and evaporation.

23               (2) "Department" means the Department of State Health  
24 Services.

25               (3) "Embryonic and fetal tissue remains" means an  
26 embryo, a fetus, body parts, or organs from a pregnancy that  
27 terminates in the death of the embryo or fetus and for which the

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issuance of a fetal death certificate is not required by state law.  
The term does not include the umbilical cord, placenta, gestational  
sac, blood, or body fluids.

(4) "Executive commissioner" means the executive  
commissioner of the Health and Human Services Commission.

(5) "Incineration" means the process of burning  
remains in an incinerator.

(6) "Interment" means the disposition of remains by  
entombment, burial, or placement in a niche.

(7) "Steam disinfection" means the act of subjecting  
remains to steam under pressure to disinfect the remains.

Sec. 697.003. APPLICABILITY OF OTHER LAW. Embryonic and  
fetal tissue remains are not pathological waste under state law.  
Unless otherwise provided by this chapter, Chapters 711 and 716 of  
this code and Chapter 651, Occupations Code, do not apply to the  
disposition of embryonic and fetal tissue remains.

Sec. 697.004. DISPOSITION OF EMBRYONIC AND FETAL TISSUE  
REMAINS. (a) Subject to Section 241.010, a health care facility  
in this state that provides health or medical care to a pregnant  
woman shall dispose of embryonic and fetal tissue remains that are  
passed or delivered at the facility by:

(1) interment;

(2) cremation;

(3) incineration followed by interment; or

(4) steam disinfection followed by interment.

(b) The ashes resulting from the cremation or incineration  
of embryonic and fetal tissue remains:



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1           (1) may be interred or scattered in any manner as  
2 authorized by law for human remains; and

3           (2) may not be placed in a landfill.

4           (c) A health care facility responsible for disposing of  
5 embryonic and fetal tissue remains may coordinate with an entity in  
6 the registry established under Section 697.005 in an effort to  
7 offset the cost associated with burial or cremation of the  
8 embryonic and fetal tissue remains of an unborn child.

9           (d) Notwithstanding any other law, the umbilical cord,  
10 placenta, gestational sac, blood, or body fluids from a pregnancy  
11 terminating in the death of the embryo or fetus for which the  
12 issuance of a fetal death certificate is not required by state law  
13 may be disposed of in the same manner as and with the embryonic and  
14 fetal tissue remains from that same pregnancy as authorized by this  
15 chapter.

16           Sec. 697.005. BURIAL OR CREMATION ASSISTANCE REGISTRY. The  
17 department shall:

18           (1) establish and maintain a registry of:

19                   (A) participating funeral homes and cemeteries  
20 willing to provide free common burial or low-cost private burial;  
21 and

22                   (B) private nonprofit organizations that  
23 register with the department to provide financial assistance for  
24 the costs associated with burial or cremation of the embryonic and  
25 fetal tissue remains of an unborn child; and

26           (2) make the registry information available on request  
27 to a physician, health care facility, or agent of a physician or

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1 health care facility.

2 Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The  
3 department shall develop a grant program that uses private  
4 donations to provide financial assistance for the costs associated  
5 with disposing of embryonic and fetal tissue remains.

6 Sec. 697.007. SUSPENSION OR REVOCATION OF LICENSE. The  
7 department may suspend or revoke the license of a health care  
8 facility that violates this chapter or a rule adopted under this  
9 chapter.

10 Sec. 697.008. CIVIL PENALTY. (a) A person that violates  
11 this chapter or a rule adopted under this chapter is liable for a  
12 civil penalty in an amount of \$1,000 for each violation.

13 (b) The attorney general, at the request of the department,  
14 may sue to collect the civil penalty. The attorney general may  
15 recover reasonable expenses incurred in collecting the civil  
16 penalty, including court costs, reasonable attorney's fees,  
17 investigation costs, witness fees, and disposition expenses.

18 Sec. 697.009. RULES. The executive commissioner shall  
19 adopt rules to implement this chapter.

20 SECTION 14. Section [164.052](#)(a), Occupations Code, is  
21 amended to read as follows:

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

24 (1) submits to the board a false or misleading  
25 statement, document, or certificate in an application for a  
26 license;

27 (2) presents to the board a license, certificate, or

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1 diploma that was illegally or fraudulently obtained;

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

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

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

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

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

14 (8) purchases, sells, barters, or uses, or offers to  
15 purchase, sell, barter, or use, a medical degree, license,  
16 certificate, or diploma, or a transcript of a license, certificate,  
17 or diploma in or incident to an application to the board for a  
18 license to practice medicine;

19 (9) alters, with fraudulent intent, a medical license,  
20 certificate, or diploma, or a transcript of a medical license,  
21 certificate, or diploma;

22 (10) uses a medical license, certificate, or diploma,  
23 or a transcript of a medical license, certificate, or diploma that  
24 has been:

25 (A) fraudulently purchased or issued;

26 (B) counterfeited; or

27 (C) materially altered;

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

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

6           (13) impersonates a physician or permits another to  
7 use the person's license or certificate to practice medicine in  
8 this state;

9           (14) directly or indirectly employs a person whose  
10 license to practice medicine has been suspended, canceled, or  
11 revoked;

12           (15) associates in the practice of medicine with a  
13 person:

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

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

18           (16) performs or procures a criminal abortion, aids or  
19 abets in the procuring of a criminal abortion, attempts to perform  
20 or procure a criminal abortion, or attempts to aid or abet the  
21 performance or procurement of a criminal abortion;

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

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

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1 (A) the abortion is necessary to prevent the  
2 death of the woman;

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

5 (C) the woman is diagnosed with a significant  
6 likelihood of suffering imminent severe, irreversible brain damage  
7 or imminent severe, irreversible paralysis;

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

14 (20) otherwise performs an abortion on an  
15 unemancipated minor in violation of Chapter 33, Family Code; or

16 (21) performs or induces or attempts to perform or  
17 induce an abortion in violation of Subchapter C, F, or G, Chapter  
18 171, Health and Safety Code.

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

21 (b) The sanctions provided by Subsection (a) are in addition  
22 to any other grounds for refusal to admit persons to examination  
23 under this subtitle or to issue a license or renew a license to  
24 practice medicine under this subtitle. The criminal penalties  
25 provided by Section 165.152 do not apply to a violation of Section  
26 170.002, Health and Safety Code, or Subchapter C, F, or G, Chapter  
27 171, Health and Safety Code.

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SECTION 16. Section 48.02(a), Penal Code, is amended to read as follows:

(a) In this section, "human [~~Human~~] organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, [~~fetal tissue~~], or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents. The term does not include human fetal tissue as defined by Section 48.03.

SECTION 17. Chapter 48, Penal Code, is amended by adding Section 48.03 to read as follows:

Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL TISSUE. (a) In this section, "human fetal tissue" has the meaning assigned by Section 173.001, Health and Safety Code.

(b) A person commits an offense if the person knowingly offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human fetal tissue for economic benefit.

(c) An offense under this section is a state jail felony.

(d) It is a defense to prosecution under this section that the actor:

(1) is an employee of or under contract with an accredited public or private institution of higher education; and

(2) acquires, receives, or transfers human fetal tissue solely for the purpose of fulfilling a donation authorized by Section 173.005, Health and Safety Code.

(e) This section does not apply to:

(1) human fetal tissue acquired, received, or transferred solely for diagnostic or pathological testing;

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1           (2) human fetal tissue acquired, received, or  
2 transferred solely for the purposes of a criminal investigation;

3           (3) human fetal tissue acquired, received, or  
4 transferred solely for the purpose of disposing of the tissue in  
5 accordance with state law or rules applicable to the disposition of  
6 human fetal tissue remains;

7           (4) human fetal tissue or human tissue acquired during  
8 pregnancy or at delivery of a child, provided the tissue is acquired  
9 by an accredited public or private institution of higher education  
10 for use in research approved by an institutional review board or  
11 another appropriate board, committee, or body charged with  
12 oversight applicable to the research; or

13           (5) cell lines derived from human fetal tissue or  
14 human tissue existing on September 1, 2017, that are used by an  
15 accredited public or private institution of higher education in  
16 research approved by an institutional review board or another  
17 appropriate board, committee, or body charged with oversight  
18 applicable to the research.

19           (f) With the consent of the appropriate local county or  
20 district attorney, the attorney general has concurrent  
21 jurisdiction with that consenting local prosecutor to prosecute an  
22 offense under this section.

23           SECTION 18. (a) Not later than December 1, 2017, the  
24 executive commissioner of the Health and Human Services Commission  
25 shall adopt any rules necessary to implement Section 245.011,  
26 Health and Safety Code, as amended by this Act, and Chapters 173 and  
27 697, Health and Safety Code, as added by this Act.

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1 (b) The Department of State Health Services shall:

2 (1) as soon as practicable after the effective date of  
3 this Act, develop the electronic reporting system required by  
4 Section 245.011, Health and Safety Code, as amended by this Act;

5 (2) not later than October 1, 2017, establish the  
6 grant program required by Section 697.006, Health and Safety Code,  
7 as added by this Act;

8 (3) not later than December 1, 2017, prescribe the  
9 standard consent form required by Section 173.006, Health and  
10 Safety Code, as added by this Act; and

11 (4) not later than February 1, 2018, begin to award  
12 grants under the grant program described by Subdivision (2) of this  
13 subsection.

14 SECTION 19. (a) Subchapters F and G, Chapter 171, Health  
15 and Safety Code, as added by this Act, apply only to an abortion  
16 performed on or after the effective date of this Act. An abortion  
17 performed before the effective date of this Act is governed by the  
18 law in effect immediately before the effective date of this Act, and  
19 that law is continued in effect for that purpose.

20 (b) Sections 173.003, 173.004, 173.005, and 173.006, Health  
21 and Safety Code, as added by this Act, apply to a donation of human  
22 fetal tissue that occurs on or after the effective date of this Act,  
23 regardless of whether the human fetal tissue was acquired before,  
24 on, or after that date.

25 (c) An authorized facility is not required to make an  
26 initial annual report under Section 173.009, Health and Safety  
27 Code, as added by this Act, before January 1, 2019.



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1 (d) Chapter 697, Health and Safety Code, as added by this  
2 Act, applies only to the disposition of embryonic and fetal tissue  
3 remains that occurs on or after February 1, 2018. The disposition  
4 of embryonic and fetal tissue remains that occurs before February  
5 1, 2018, is governed by the law in effect immediately before the  
6 effective date of this Act, and the former law is continued in  
7 effect for that purpose.

8 (e) Chapter 48, Penal Code, as amended by this Act, applies  
9 only to an offense committed on or after the effective date of this  
10 Act. An offense committed before the effective date of this Act is  
11 governed by the law in effect on the date the offense was committed,  
12 and the former law is continued in effect for that purpose. For  
13 purposes of this subsection, an offense was committed before the  
14 effective date of this Act if any element of the offense occurred  
15 before that date.

16 SECTION 20. It is the intent of the legislature that every  
17 provision, section, subsection, sentence, clause, phrase, or word  
18 in this Act, and every application of the provisions in this Act to  
19 each person or entity, are severable from each other. If any  
20 application of any provision in this Act to any person, group of  
21 persons, or circumstances is found by a court to be invalid for any  
22 reason, the remaining applications of that provision to all other  
23 persons and circumstances shall be severed and may not be affected.

24 SECTION 21. (a) If some or all of the provisions of this  
25 Act are ever temporarily or permanently restrained or enjoined by  
26 judicial order, all other provisions of Texas law regulating or  
27 restricting abortion shall be enforced as though the restrained or

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1 enjoined provisions had not been adopted; provided, however, that  
2 whenever the temporary or permanent restraining order or injunction  
3 is stayed or dissolved, or otherwise ceases to have effect, the  
4 provisions shall have full force and effect.

5 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in  
6 which in the context of determining the severability of a state  
7 statute regulating abortion the United States Supreme Court held  
8 that an explicit statement of legislative intent is controlling, it  
9 is the intent of the legislature that every provision, section,  
10 subsection, sentence, clause, phrase, or word in this Act, and  
11 every application of the provisions in this Act, are severable from  
12 each other. If any application of any provision in this Act to any  
13 person, group of persons, or circumstances is found by a court to be  
14 invalid, the remaining applications of that provision to all other  
15 persons and circumstances shall be severed and may not be affected.  
16 All constitutionally valid applications of this Act shall be  
17 severed from any applications that a court finds to be invalid,  
18 leaving the valid applications in force, because it is the  
19 legislature's intent and priority that the valid applications be  
20 allowed to stand alone. Even if a reviewing court finds a provision  
21 of this Act to impose an undue burden in a large or substantial  
22 fraction of relevant cases, the applications that do not present an  
23 undue burden shall be severed from the remaining provisions and  
24 shall remain in force, and shall be treated as if the legislature  
25 had enacted a statute limited to the persons, group of persons, or  
26 circumstances for which the statute's application does not present  
27 an undue burden. The legislature further declares that it would

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1 have passed this Act, and each provision, section, subsection,  
2 sentence, clause, phrase, or word, and all constitutional  
3 applications of this Act, irrespective of the fact that any  
4 provision, section, subsection, sentence, clause, phrase, or word,  
5 or applications of this Act, were to be declared unconstitutional  
6 or to represent an undue burden.

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

11 SECTION 22. This Act takes effect September 1, 2017.

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\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 15, 2017, by the following vote: Yeas 24, Nays 6; and that the Senate concurred in House amendments on May 26, 2017, by the following vote: Yeas 22, Nays 9.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on May 20, 2017, by the following vote: Yeas 93, Nays 45, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# **Exhibit B**

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 21, 2017**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: SB8** by Schwertner (Relating to certain prohibited abortions and the treatment and disposition of a human fetus, human fetal tissue, and embryonic and fetal tissue remains; creating a civil cause of action; imposing a civil penalty; creating criminal offenses.), As **Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would prohibit certain partial-birth abortions, would classify the violation of that prohibition as a state jail felony, and would authorize civil action against a physician who conducted the prohibited procedure. The bill would allow a physician to seek a hearing before the Texas Medical Board to determine medical necessity of the procedure. The bill would add partial-birth abortions to the list of prohibited actions applicable to physicians or applicants for a license to practice medicine, making them subject to disciplinary action by the Texas Medical Board or the revoking of their license. The bill would prohibit certain dismemberment abortions and would establish a criminal penalty (state jail felony) for a violation of the prohibition. The bill would add dismemberment abortions to the list of prohibited actions applicable to physicians or applicants for a license to practice medicine, making them subject to disciplinary action by the Texas Medical Board or the revoking of their license. The bill would establish requirements governing the donation of human fetal tissue and would create a Class A misdemeanor offense for committing certain acts related to fetal tissue donation. The Department of State Health Services (DSHS) would be required to develop a standardized consent form for the donation of human fetal tissue. The bill would require certain facilities to submit annual reports to DSHS regarding fetal tissue donations. The bill would prohibit the sale or trade of human fetal tissue and would classify the knowing violation of that prohibition as a state jail felony. The bill would authorize the Attorney General to assist in certain investigations and prosecute certain offenses related to donation or trade/sale of fetal tissue. The bill would require health care facilities to dispose of fetal remains following certain criteria. DSHS would be required to create and maintain a registry of certain entities that can assist with costs associated with burial or cremation of fetal remains. Additionally, DSHS would be required to make the registry information available to certain parties on request. DSHS would be required to develop a grant program that uses private donations to provide financial assistance for the costs associated with fetal remains disposition by October 1, 2017 and begin to award grants by February 1, 2018. DSHS would be permitted to suspend or revoke the licenses of health care facilities that do not comply with fetal remains disposition criteria. The non-complying facility would be liable for a civil penalty for each violation and, at the request of DSHS, the Attorney General would be allowed to file a suit to collect the penalty. The bill would amend various sections of the Health and Safety Code and the Family Code to update the definition of abortion. The bill would amend Chapter 245 of the Health and Safety Code and require certain physicians that perform abortions to submit monthly reports to DSHS,

rather than on an annual basis. DSHS would be required to establish an electronic reporting system for report submissions. DSHS would be required to notify the Texas Medical Board of any physicians that violate the reporting requirement. DSHS would be required to publish a monthly report of aggregated data from the reports on its Internet website. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement certain provisions of the bill by December 1, 2017.

According to DSHS, implementing and maintaining the grant program will require additional staffing. It is assumed the cost of providing grants under the grant program would be dependent on the level of donations received, which cannot be estimated at this time; however, it is assumed there would be no net fiscal impact as all donations would be distributed as grants. According to DSHS, technology costs will be required to create the electronic reporting system for physicians report submissions. According to DSHS, additional staff will be required to validate data with abortion providers on a monthly basis and to prepare the monthly reports to be published on their Internet website. It is assumed that these costs can be absorbed by the agency.

According to HHSC, the University of Texas System, the Office of Court Administration, the Texas Medical Board, the Texas Department of Criminal Justice, and the Office of Attorney General, the provisions of the bill can be implemented within existing resources. This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

### **Local Government Impact**

According to the Texas Association of Counties, the fiscal impact to counties to implement the provisions of the bill would not be significant.

Under the provisions of the bill, an offense would be a Class A misdemeanor, punishable by a fine of not more than \$10,000. Costs associated with enforcement and prosecution could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

Certain hospitals that are units of local government reported via survey by the Texas Hospital Association (THA) estimates of costs associated with implementing the provisions of the bill: In the survey, Texas hospital number 1 indicated 1680 fetal remains specimens per year. For each burial, costs range between \$130-\$390 depending on which funeral home is used. Thus, THA reported the burial costs per year per hospital range between \$218,400-\$655,200.

In the same survey, THA indicated that Texas hospital number 2 reported that their existing funeral home contract specifies a cost of \$1,060 for cremation and \$1,400 for burial. In the last 12 months, hospital number 2 handled 100 fetuses of less than 350 grams not including specimens of fetal tissue, which are not currently tracked.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of, 696 Department of Criminal Justice, 720 The University of Texas System Administration

**LBB Staff:** UP, JPo, AG, LR, RGU, KCA, JSm, JGA