

## **BILL ANALYSIS**

Senate Research Center  
85R4616 SCL-D

S.B. 415  
By: Perry  
Health & Human Services  
1/31/2017  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A dismemberment abortion is an abortion in which a living, unborn child is surgically dismembered, causing the death of the child.

S.B. 415 does not prohibit second trimester abortions. Under S.B. 415, dismemberment may be used as long as the unborn child's heart has stopped beating prior to dismembering.

S.B. 415 prohibits the brutal procedure of dismemberment on a living, unborn child.

Other states have already passed similar bans.

As proposed, S.B. 415 amends current law relating to a prohibition on the performance of dismemberment abortions; provides penalties; and creates a criminal offense.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 171, Health and Safety Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. DISMEMBERMENT ABORTIONS**

Sec. 171.101. DEFINITION. Defines "dismemberment abortion."

Sec. 171.102. DISMEMBERMENT ABORTIONS PROHIBITED. (a) Prohibits a person from intentionally performing a dismemberment abortion unless the dismemberment abortion is necessary in a medical emergency.

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

Sec. 171.103. CRIMINAL PENALTY. (a) Provides that a person who violates Section 171.102 commits an offense.

(b) Sets forth that an offense under this section is a state jail felony.

Sec. 171.104. CONSTRUCTION OF SUBCHAPTER. (a) Requires this subchapter to be construed, as a matter of state law, to be enforceable to the maximum possible extent consistent with but not further than federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save the subchapter from judicial invalidation. Provides that judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

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

(c) Prohibits a state executive or administrative official from declining to enforce this subchapter, or adopting a construction of this subchapter in a way that narrows its applicability, based on the official's own beliefs concerning the requirements of the state or federal constitution, unless the official is enjoined by a state or federal court from enforcing this subchapter.

(d) Prohibits this subchapter from being construed to authorize the prosecution of or a cause of action to be brought against a woman on whom an abortion is performed or induced in violation of this subchapter or create or recognize a right to abortion or a right to a particular method of abortion.

SECTION 2. Amends Section 164.052(a), Occupations Code, to include that a physician or an applicant for a license to practice medicine commits a prohibited practice if that person performs a dismemberment abortion in violation of Subchapter F, Chapter 171, Health and Safety Code. Makes nonsubstantive changes.

SECTION 3. Amends Section 164.055(b), Occupations Code, as follows:

(b) Provides that the criminal penalties provided by Section 165.152 (Practicing Medicine in Violation of Subtitle), Occupations Code, do not apply to a violation of Section 170.002 (Prohibited Acts; Exemption), Health and Safety Code, or Subchapter F, Chapter 171 (Abortion), Health and Safety Code.

SECTION 4. (a) Requires that, if some or all of the provisions of this Act are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Texas law regulating or restricting abortion be enforced as though the restrained or enjoined provisions had not been adopted; provided, however, that whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions are required to have full force and effect.

(b) Sets forth the intent of the legislature, mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, to provide that it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act, are severable from each other. Sets forth additional provisions regarding legislative intent.

(c) Severability clause.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2017.

