**Section 1. Definitions.**

As used in this subchapter:

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

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

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

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

(5)  "Pregnancy" means the human female reproductive condition that:

(A)  begins with fertilization;

(B)  occurs when the woman is carrying the developing human offspring; and

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

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

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

(8) “Woman” and “women” include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

**Section 2. Determination of Presence Of Fetal Heartbeat Required; Record.**

(a)  For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b)  Except as provided by Sections 4 and 5, an abortion may not be performed or induced on a pregnant woman unless a physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

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

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

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

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

(1)  the estimated gestational age of the unborn child;

(2)  the method used to estimate the gestational age; and

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

**Section 3. Prohibited Abortion of Unborn Child With Detectable Fetal Heartbeat; Effect.**

(a)  Except as provided by Sections 4 and 5, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 2 or failed to perform a test to detect a fetal heartbeat.

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

(c)  This section does not affect:

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

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

**Section 4.  Exception for Medical Emergency; Records.**

(a)  Sections 2 and 3 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

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

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

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

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

**Section 5. Exemption for Preemption and Intergovernmental Immunity.**

Sections 2 and 3 do not apply to an abortion performed at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity.

**Section 6.  Construction of Subchapter.**

Nothing in this subchapter may be construed to:

(a) create or recognize a right to abortion before a fetal heartbeat is detected.

(b) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;

(c) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion; or

(d) restrict a political subdivision from regulating or prohibiting abortion in any manner.

**Section 7. Limitations on Public Enforcement.**

Notwithstanding any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 8. No direct or indirect enforcement of this subchapter may be taken or threatened by the state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person or entity, in any manner whatsoever, except as provided in Section 8, and no violation of this subchapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 8, PROVIDED, that this section does not preclude enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation.

**Section 8. Civil Liability.**

(a) Any person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, may bring a civil action against any person or entity that:

(1)  performs or induces an abortion in violation of any provision or requirement of this subchapter;

(2)  knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of any provision or requirement of this subchapter, regardless of whether the person or entity knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3)  intends to engage in the conduct described by Subsections (a)(1) or (a)(2).

(b)  If a claimant prevails in an action brought under this section, the court shall award:

(1)  injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;

(2)  statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced or aided or abetted in violation of this subchapter;

(3) nominal and compensatory damages if the plaintiff has suffered harm from the defendant’s conduct, including but not limited to loss of consortium and emotional distress; and

(4)  costs and attorney's fees.

(c)  Notwithstanding Subsection (b), a court may not award relief under Subsection (b)(2) or (b)(4) in response to a violation of Subsection (a)(1) or (a)(2) if the defendant demonstrates that the defendant previously paid or has been ordered to pay the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d)  Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e)  Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1)  ignorance or mistake of law;

(2)  a defendant's belief that the requirements or provisions of this subchapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant violated Subsection (a);

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

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

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

(7)  any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 9.

(f)(1)  It is an affirmative defense if a person or entity sued under Subsection (a)(2) or (a)(3) reasonably believed, after conducting a reasonable investigation, that the individuals and organizations involved with performing or facilitating the abortion would comply with every requirement and provision of this subchapter;

(2) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) by a preponderance of the evidence.

(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by [**state constitution’s free-speech provision**] of the [**name of state**] Constitution.

(h)(1)  Notwithstanding any other law, neither the state, nor any of its political subdivisions, nor any district or county attorney, nor any executive or administrative officer or employee of this state or a political subdivision may:

(A) act in concert or participation with anyone who brings suit under this section;

(B) establish or attempt to establish any type of agency or fiduciary relationship with a plaintiff who brings suit under this section;

(C) make any attempt to control or influence a plaintiff’s decision to bring suit under this section or the plaintiff’s conduct of the litigation; or

(D) intervene in any action brought under this section.

(2) This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of subsection (h)(1).

(i)(1) Notwithstanding any other law, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the plaintiff’s claim that the defendant violated Subsection (a) is frivolous, malicious, or brought in bad faith.

 (2) A Court may not find that an action brought under this section is frivolous, malicious, or brought in bad faith within the meaning of Subsection (i)(1) if the plaintiff:

(A) reasonably believed that the defendant performed or induced an abortion in violation of any requirement or provision of this subchapter, engaged in conduct that aided or abetted the performance or inducement of such an abortion, or intended to engage in any such conduct, regardless of whether a previous court decision declared unconstitutional a requirement or provision of this subchapter; or

(B) brings suit to seek the overruling of any previous court decision that had pronounced unconstitutional a requirement or provision of this subchapter or any other law that regulates or restricts abortion.

(j) Notwithstanding any other law, a civil action under this section shall not be subject to any provision of [**the state’s anti-SLAPP law, if it has one**], and shall not be subject to any provision of [**the state’s Religious Freedom Restoration Act, if it has one**].

(k) Notwithstanding any other law, a civil action under this section may not be brought:

(1) against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this subchapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this subchapter;

(2) against any person or entity that performs, aids or abets, or attempts to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;

(3) against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or

(4) by any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest.

**Section 9. Civil Liability: Defenses.**

(a)(1)  A defendant against whom an action is brought under Section 8 may assert an affirmative defense to liability under this section if:

(A) the defendant has standing to assert the rights of a woman or group of women seeking an abortion under the tests for third-party standing established by the Supreme Court of the United States; and

(B) the imposition of civil liability on the defendant will result in an undue burden on a woman or group of women seeking an abortion.

(2) The defendant shall bear the burden of proving the affirmative defense in Subsection (a) by a preponderance of the evidence.

(b) The affirmative defense under Subsection (a) is not available if the Supreme Court of the United States overrules *Roe v. Wade*, 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 8 occurred before the Supreme Court overruled either of those decisions.

(c) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the defendant’s personal constitutional rights as a defense to liability under Section 8, and a court may not award relief under Section 8 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

(d) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision of this subchapter as a defense to liability under Section 8.

**Section 10. Civil Liability: Venue.**

(a)  Notwithstanding any other law, a civil action brought under Section 8 shall be brought in:

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

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

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

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

(b)  If a civil action is brought under Section 8 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

**Section 11.  Sovereign, Governmental, and Official Immunity Preserved; Limits on Jurisdiction.**

(a) Notwithstanding any other law, the state shall have sovereign immunity, each of its political subdivisions shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this subchapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this subchapter, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States.

(b) Notwithstanding any other law, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (a) unless it expressly waives or abrogates immunity with specific reference to this section.

(c) Notwithstanding any other law, no attorney representing the state, its political subdivisions, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (a) or take any action that would result in a waiver of that immunity.

(d) Notwithstanding any other law, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this subchapter, or from filing a civil action under this subchapter.

(e) Nothing in this section or subchapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this subchapter as a defense to any action, claim, or counterclaim brought against that litigant.

**Section 12. Severability.**

(a)  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 Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this subchapter, and every application of the provisions in this subchapter to every person, group of persons, or circumstances, are severable from each other.

(b)  If any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be invalid, preeempted, unconstitutional, or to impose an undue burden on any woman or group of women seeking an abortion, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this subchapter, and every application of those provisions that can be enforced without imposing an undue burden on women seeking abortions, shall be severed from any applications that a court finds to be invalid, preeempted, unconstitutional, or to impose an undue burden on women seeking abortions, and the valid applications shall remain in force, because it is the legislature's intent and priority that every valid application be allowed to stand alone. Even if a reviewing court finds a provision of this subchapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not impose an undue burden.

(c) The legislature further declares that it would have enacted this subchapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this subchapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this subchapter were to be declared invalid, preeempted, unconstitutional, or to impose an undue burden.

(d) If any provision of this subchapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (a), (b), and (c).

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

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

(2)  is not a formal amendment of the language in a statute; and

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

(f) If any state or federal court disregards the severability requirements of Subsections (a), (b), (c), (d), and (e), and declares or finds any provision of this subchapter facially unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal law, the federal or state constitutions, or imposing an undue burden on women seeking abortions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law, the federal or state constitutions, or impose an undue burden on women seeking abortions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially unconstitutional is vacated or overruled.