Chapter 441

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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
amended to read as follows:

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

[(A) increase the probability of a live birth of the unborn child of the woman,]

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

[(C) remove a dead fetus].

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

(1) "Abortion" has the meaning assigned by Section 245.002 [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].

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

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

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

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

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

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

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

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

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

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

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

(1) the person consented to the partial-birth abortion; or
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(2) the person's criminally injurious conduct resulted
in the pregnancy.

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

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

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

SUBCHAPTER G. DISMEMBERMENT Abortions

Sec. 171.151. DEFINITION. In this subchapter,
"dismemberment abortion" means an abortion in which a person, with
the purpose of causing the death of an unborn child, dismembers the
living unborn child and extracts the unborn child one piece at a
time from the uterus through the use of clamps, grasping forceps,
tongs, scissors, or a similar instrument that, through the
convergence of two rigid levers, slices, crushes, or grasps, or
performs any combination of those actions on, a piece of the unborn
child’s body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child’s death.

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

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

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

Sec. 171.154. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall 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. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the
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statutory provision from invalidity.

(b) If any court determines that a provision of this subchapter is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. 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, the Supreme Court of Texas shall 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 shall agree to answer any question certified from a federal appellate court regarding the statute.

(c) A state executive or administrative official may not decline to enforce this subchapter, or adopt 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) This subchapter may not be construed to:

(1) 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

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

SECTION 7. Subtitle H, Title 2, Health and Safety Code, is
amended by adding Chapter 173 to read as follows:

CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

Sec. 173.001. DEFINITIONS. In this chapter:

  (1) "Authorized facility" means:
      (A) a hospital licensed under Chapter 241;
      (B) a hospital maintained or operated by this
          state or an agency of this state;
      (C) an ambulatory surgical center licensed under
          Chapter 243; or
      (D) a birthing center licensed under Chapter 244.

  (2) "Human fetal tissue" means any gestational human
      organ, cell, or tissue from an unborn child. The term does not
      include:
      (A) supporting cells or tissue derived from a
          pregnancy or associated maternal tissue that is not part of the
          unborn child; or
      (B) the umbilical cord or placenta, provided that
          the umbilical cord or placenta is not derived from an elective
          abortion.

Sec. 173.002. APPLICABILITY. This chapter does not apply

to:

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

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

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

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

Sec. 173.003. ENFORCEMENT. (a) The department shall
everse this chapter.

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

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

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

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

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.

Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an
1 offense if the person:
2
3 (1) offers a woman monetary or other consideration to:
4
5 (A) have an abortion for the purpose of donating
6 human fetal tissue; or
7
8 (B) consent to the donation of human fetal
9 tissue; or
10
11 (2) knowingly or intentionally solicits or accepts
12 tissue from a fetus gestated solely for research purposes.
13
14 (b) An offense under this section is a Class A misdemeanor
15 punishable by a fine of not more than $10,000.
16
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.

Sec. 173.008. RECORD RETENTION. Unless another law
1 requires a longer period of record retention, an authorized
2 facility may not dispose of any medical record relating to a woman
3 who consents to the donation of human fetal tissue before:
4
5 (1) the seventh anniversary of the date consent was
6 obtained under Section 173.006; or
7
8 (2) if the woman was younger than 18 years of age on
9
the date consent was obtained under Section 173.006, the later of:

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

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

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

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

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

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

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant [an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus]. The term does not include birth control devices or oral contraceptives. 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; or

(C) remove an ectopic pregnancy.
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(4-a) "Ectopic pregnancy" means the implantation of a fertilized egg or embryo outside of the uterus.

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

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

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

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

Sec. 245.011. PHYSICIAN REPORTING REQUIREMENTS; CRIMINAL PENALTY.

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

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

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

(d) Except as provided by Section 245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter
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552, Government Code. That information may not be released or made public on subpoena or otherwise, except that release may be made:

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

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

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

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

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

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

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

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

13
Sec. 245.0115. NOTIFICATION. Not later than the seventh day after the date the report required by Section 245.011 is due, the commissioner of state health services shall notify the Texas Medical Board of a violation of that section.

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

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

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

CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

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

Sec. 697.002. DEFINITIONS. In this chapter:

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

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

(3) "Embryonic and fetal tissue remains" means an embryo, a fetus, body parts, or organs from a pregnancy that terminates in the death of the embryo or fetus and for which the
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) may be interred or scattered in any manner as authorized by law for human remains; and

(2) may not be placed in a landfill.

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

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

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

(1) establish and maintain a registry of:

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

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

(2) make the registry information available on request to a physician, health care facility, or agent of a physician or
Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The department shall develop a grant program that uses private donations to provide financial assistance for the costs associated with disposing of embryonic and fetal tissue remains.

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

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

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

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

SECTION 14. Section 164.052(a), Occupations Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

(18) performs an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy unless:
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(A) the abortion is necessary to prevent the death of the woman;

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

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

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

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

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

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

(b) The sanctions provided by Subsection (a) are in addition to any other grounds for refusal to admit persons to examination under this subtitle or to issue a license or renew a license to practice medicine under this subtitle. The criminal penalties provided by Section 165.152 do not apply to a violation of Section 170.002, Health and Safety Code, or Subchapter C, F, or G, Chapter 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 organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, 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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(2) human fetal tissue acquired, received, or transferred solely for the purposes of a criminal investigation;

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

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

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

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

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

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

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

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

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

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

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

(c) An authorized facility is not required to make an initial annual report under Section 173.009, Health and Safety Code, as added by this Act, before January 1, 2019.
(d) Chapter 697, Health and Safety Code, as added by this Act, applies only to the disposition of embryonic and fetal tissue remains that occurs on or after February 1, 2018. 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.

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

SECTION 20. 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 to each person or entity, are severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected.

SECTION 21. (a) 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 shall 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 shall have full force and effect.

(b) 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, 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. If any application of any provision in this Act to any
person, group of persons, or circumstances is found by a court to be
invalid, the remaining applications of that provision to all other
persons and circumstances shall be severed and may not be affected.
All constitutionally valid applications of this Act shall be
severed from any applications that a court finds to be invalid,
leaving the valid applications in force, because it is the
legislature's intent and priority that the valid applications be
allowed to stand alone. Even if a reviewing court finds a provision
of this Act 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 provisions 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 present
an undue burden. The legislature further declares that it would
have passed this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this Act, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this Act, were to be declared unconstitutional or to represent an undue burden.

(c) If any provision of this Act 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.

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

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.

Approved:

6-6-2017

Date

Greg Abbott
Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
2:15 PM—O'CLOCK
JUN 06 2017
Secretary of State
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
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 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 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 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 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; however, it is assumed that the cost can be absorbed by the agency. 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 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, 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, AG, LR, RGU, KCA, JSm, JGA
TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

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 and human fetal tissue; creating a civil cause of action; creating offenses.), Committee Report 1st House, Substituted

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 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 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 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. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill related to fetal tissue donation by December 1, 2017.

According to HHSC, 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.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 529 Health and Human Services Commission, 537 State Health Services, Department of, 696 Department of Criminal Justice

LBB Staff: UP, KCA, LR, RGU, JSm, JGA
TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

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 other tissue resulting from pregnancy; creating a civil cause of action; creating offenses.), As Introduced

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 establish requirements governing the donation of human fetal tissue, placenta, or umbilical cord, and would create a Class C 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 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 the sale or trade of human fetal tissue and would classify the knowing violation of that prohibition as a state jail felony. The executive commissioner of the Health and Human Services Commission (HHSC) would be required to adopt any rules necessary to implement provisions of the bill related to fetal tissue donation by December 1, 2017.

The bill would take effect September 1, 2017.

According to the Health and Human Services Commission, the Office of Court Administration, the Texas Medical Board, and the Texas Department of Criminal Justice, 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 C 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 impact. In addition to the fine, punishment can include up to 180 days of deferred disposition.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 503 Texas Medical Board, 529 Health and Human Services Commission, 537 State Health Services, Department of, 696 Department of Criminal Justice

LBB Staff: UP, KCA, LR, RGU, TBo, LM, EK, JGA
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

The provisions of the bill addressed by this analysis would amend the Health and Safety Code and the Penal Code as they relate to prohibited abortions and the disposition of certain human fetal remains resulting from pregnancy. Under the provisions of the bill, knowingly performing certain partial-birth or dismemberment abortions would be punishable by a state jail felony. The bill would also make, in certain situations, knowingly offering to purchase, sell, receive, or acquire certain human fetal tissue a state jail felony

A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years or Class A misdemeanor punishment. In addition to confinement, most felony offenses are subject to an optional fine not to exceed $10,000

Expanding the list of behaviors for which a criminal penalty is applied is expected to result in increased demands on the correctional resources of counties or of the State due to a potential increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. However, this analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand for state correctional resources.

Source Agencies:
LBB Staff: UP, LM, JPo, KJo
TO: Honorable Byron Cook, Chair, House Committee on State Affairs

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.), Committee Report 2nd House, Substituted

The provisions of the bill addressed by this analysis would amend the Health and Safety Code and the Penal Code as they relate to prohibited abortions and the disposition of certain human fetal remains resulting from pregnancy. Under the provisions of the bill, knowingly performing certain partial-birth abortions would be punishable as a state jail felony. The bill would also make, in certain situations, knowingly offering to purchase, sell, receive, or acquire certain human fetal tissue a state jail felony.

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Source Agencies:
LBB Staff: UP, LM, KJo
TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services
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 and human fetal tissue; creating a civil cause of action; creating offenses.), Committee Report 1st House, Substituted

The provisions of the bill that are the subject of this analysis would amend the Health and Safety and the Penal Codes as they relate to prohibited abortions and the disposition of human fetal remains resulting from pregnancy. Under the provisions of the bill, knowingly performing certain partial-birth abortions would be punishable as a state jail felony. The bill would also make, in certain situations, knowingly offering to purchase, sell, receive, or acquire human fetal tissue a state jail felony.

A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed $10,000 or Class A Misdemeanor punishment.

Expanding the list of behaviors for which a criminal penalty is applied is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. However, this analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand of state correctional resources.

Source Agencies:
LBB Staff: UP, LM, KJo
TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

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 other tissue resulting from pregnancy; creating a civil cause of action; creating offenses.), As Introduced

The provisions of the bill that are the subject of this analysis would amend the Health and Safety and the Penal Codes as they relate to prohibited abortions and the disposition of certain human fetal remains resulting from pregnancy. Under the provisions of the bill, knowingly performing certain partial-birth abortions would be punishable as a state jail felony. The bill would also make, in certain situations, knowingly offering to purchase, sell, receive, or acquire certain human fetal tissue a state jail felony.

A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed $10,000 or Class A Misdemeanor punishment.

Expanding the list of behaviors for which a criminal penalty is applied is expected to result in increased demands upon the correctional resources of counties or of the State due to longer terms of supervision in the community or longer terms of confinement in state correctional institutions. However, this analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on the demand of state correctional resources.

Source Agencies:
LBB Staff: UP, LM, KJo