

File No. 210955

Committee Item No. \_\_\_\_\_

Board Item No. 30

## COMMITTEE/BOARD OF SUPERVISORS

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Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: September 14, 2021

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Prepared by: Lisa Lew

Date: September 10, 2021

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Recognizing Abortion as Healthcare - Condemning Texas Senate Bill 8]

2

3 **Resolution recognizing Abortion as Healthcare, objecting to Texas Senate Bill 8 and**  
4 **urging approaches that uplift autonomy for women and other birthing people; urging**  
5 **the Biden Administration and Congress to pass legislation protecting Reproductive**  
6 **Rights; and declaring the City and County of San Francisco a Champion of**  
7 **Reproductive Freedom and Justice.**

8

9 WHEREAS, On September 1, 2021, the Texas anti-abortion law, known as Senate Bill  
10 8 (SB 8), became law, undermining Roe v. Wade, blocking access to abortion after six (6)  
11 weeks of pregnancy, and taking away a woman’s right to choose; and

12 WHEREAS, SB 8, is the only abortion ban earlier than 20 weeks that is in effect in the  
13 nation; banning abortion as soon as cardiac activity (heartbeat) is detectable; and

14 WHEREAS, Six weeks is only two weeks after a missed period, assuming a 28-day  
15 menstrual cycle; this is before many, if not most, women and birthing people know that they  
16 are pregnant, and amounts to a near complete ban on abortion in Texas, as 85% of abortion  
17 procedures in the state happen after the sixth week of pregnancy; and

18 WHEREAS, The definition of pregnancy in SB 8 is medically inaccurate, defining the  
19 length of pregnancy as beginning from the first day of the woman's and birthing persons last  
20 menstrual period; and

21 WHEREAS, The impact deprives Texas women and birthing people of nearly all  
22 options for abortion services; and

23 WHEREAS, SB 8 sets a dangerous precedent and puts reproductive freedom across  
24 the nation at risk; and

25

1           WHEREAS, Limiting access to reproductive healthcare, including systematically  
2 stripping birthing people of access to abortion, is not only a transgression against basic  
3 human reproductive rights but is also an assault on dignity and autonomy; and

4           WHEREAS, While access to abortion is the forefront concern regarding SB 8, the  
5 debate surrounding it is emblematic of the continued work to subvert the rights of women,  
6 birthing people, and people living in poverty; this is the resistance women and allies have  
7 made throughout history to defend their basic humanity; and

8           WHEREAS, On August 31, 2021, the Supreme Court of the United States (SCOTUS)  
9 declined to prematurely block Senate Bill 8 from going into effect, and on September 1, 2021,  
10 SCOTUS declined to block SB 8 in a 5-4 ruling; and

11           WHEREAS, Roe v. Wade, the landmark SCOTUS decision providing the “right to  
12 privacy” which protects the right for pregnant people to choose to have an abortion prior to  
13 viability is in imminent danger of being overturned; and

14           WHEREAS, Every conservative state has the ability and now the blessing from the  
15 SCOTUS to make abortion illegal, and if red states follow Texas’ model, other states can  
16 throw their abortion laws into legal limbo, too, where, for now, almost no abortions are allowed  
17 to go forward and while we may technically still have the "right" to abortion in the U.S., in  
18 many states the ability to access abortion is virtually gone; and

19           WHEREAS, TRAP laws, targeted restrictions on Abortion Providers have already  
20 chipped away abortion access in many states; and

21           WHEREAS, In dissenting, SCOTUS Justice Sonia Sotomayor said: “The court’s order  
22 is stunning, presented with an application to enjoin a flagrantly unconstitutional law  
23 engineered to prohibit women from exercising their constitutional rights and evade judicial  
24 scrutiny, a majority of justices have opted to bury their heads in the sand.;;” and

25

1           WHEREAS, This Texas law deputizes private individuals to sue anyone who performs  
2 an abortion procedure or “aids and abets” it; delegating enforcement of the prohibition to the  
3 populace at large to a Court that has never dealt with this question; and

4           WHEREAS, Aiding and abetting also falls on Uber and Lyft drivers who transport those  
5 seeking an abortion to a hospital, simultaneously incentivizing community policing through a  
6 minimum of \$10,000 financial payout for successful suits, where Plaintiffs with no connection  
7 to the birthing person can also obtain attorney fees and an injunction for “outing” those  
8 needing an abortion; and

9           WHEREAS, Aiding and abetting also falls on the communities supporting women and  
10 birthing people seeking to make decisions regarding their bodies, further isolating people who  
11 might seek community support or trusted council and further criminalizes those who “intends  
12 to engage in the conduct” of aiding and abetting, putting those who would even think to help  
13 women and birthing people needing an abortion at risk; and

14           WHEREAS, SB 8 does not have an exception for cases of rape, forcing women and  
15 birthing people who have been victims of sexual assault to carry pregnancies to term that are  
16 the result of their assault; and

17           WHEREAS, As a result of SB 8, access to safe abortion in Texas will no longer be  
18 available; women and birthing people in Texas will now be forced to travel to other states or  
19 carry an unwanted pregnancy and abortion providers and supporters will face legal attacks  
20 with the new Texas anti-abortion law in place; and

21           WHEREAS, There are already news stories coming out that Texas abortion providers  
22 have stopped providing abortions to women and birthing people who could previously receive  
23 one and may not have even realized this law was coming into effect; and

24           WHEREAS, Women and birthing people will continue to need abortion options and now  
25 may seek dangerous alternatives, even if it means risking their lives; and

1           WHEREAS, Low-income Black and Brown and Indigenous women and birthing people  
2 will be disproportionately affected by the abortion ban, as 20% of Black and Brown women in  
3 Texas live in poverty and won't have the means to seek treatment out-of-state; and

4           WHEREAS, Prior to SB 8, access to an abortion was already difficult for women and  
5 birthing people in Texas, where women and birthing people were required to make at least  
6 two trips to an abortion provider; the first trip required a sonogram and received state-  
7 mandated paperwork about alternatives and risks associated with terminating and requiring  
8 the birthing person to wait 24 hours before the procedure, all while often receiving biased  
9 counseling before seeking treatment; and

10           WHEREAS, In response to SB 8, House Speaker, Nancy Pelosi plans to bring up  
11 legislation that would codify Roe v. Wade nationwide; and

12           WHEREAS, On September 7, 2021, Mexico's Supreme Court voted to Decriminalize  
13 Abortion; and

14           WHEREAS, NARAL Pro-Choice CA, Planned Parenthood Northern California Action  
15 Fund, the San Francisco Women's Political Committee (SFWPC), Department on the Status  
16 of Women, the Human Rights Commission, and Women's March San Francisco, are  
17 committed to advocating and fighting to protect access to reproductive care; solemnly  
18 believing that women and other birthing people alone, hold the right to make decisions about  
19 their bodies and futures; and supporting safe access to abortion in Texas and everywhere;  
20 now, therefore, be it

21           RESOLVED, That the City and County of San Francisco recognizes Abortion as  
22 Healthcare and rejects Texas Senate Bill 8; and

23           FURTHER RESOLVED, That the Board of Supervisors and City and County of San  
24 Francisco commit to passing and implementing legislation that uplifts women and birthing  
25 people's choices regarding their bodies and advancing Reproductive Justice; and

1           FURTHER RESOLVED, That the City and County of San Francisco urges the Biden  
2 Administration and Congress to act swiftly in passing and implementing legislation at the  
3 federal level to protect Reproductive Rights and Freedom; and

4           FURTHER RESOLVED, That the City and County of San Francisco refuses to  
5 entertain assertions that the dignity and autonomy of women and birthing people are open to  
6 negotiation, and declares that it is a Champion of Reproductive Freedom and Justice; and

7           FURTHER RESOLVED, That the Board of Supervisors of the City and County of San  
8 Francisco further directs the Clerk of the Board to transmit copies of this Resolution to the  
9 President and Vice President of the United States, to the Speaker of the House of  
10 Representatives, to the Majority Leader of the Senate, to the U.S. Senators for the State of  
11 California upon passage.

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AN ACT

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

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

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

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

life is in danger.

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

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. 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.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds,

according to contemporary medical research, that:

(1) fetal heartbeat has become a key medical predictor

that an unborn child will reach live birth;

(2) cardiac activity begins at a biologically

identifiable moment in time, normally when the fetal heart is

formed in the gestational sac;

(3) Texas has compelling interests from the outset of

a woman's pregnancy in protecting the health of the woman and the

life of the unborn child; and

(4) to make an informed choice about whether to

continue her pregnancy, the pregnant woman has a compelling

interest in knowing the likelihood of her unborn child surviving to

full-term birth based on the presence of cardiac activity.

Sec. 171.203. 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 Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the 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.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH

DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by

Section 171.205, 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 171.203 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 171.203 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.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

(a) Sections 171.203 and 171.204 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).

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

(b) This subchapter may not be construed to:

(1) 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;

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT.

(a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this 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, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter

or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a

remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that

regulate or prohibit abortion.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR

ABETTING VIOLATION. (a) Any person, other than an officer or

employee of a state or local governmental entity in this state, may

bring a civil action against any person who:

(1) performs or induces an abortion in violation 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  
this subchapter, regardless of whether the person 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

Subdivision (1) or (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

in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in 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 Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth 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 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 engaged in  
conduct that violates this subchapter;

(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 171.209.

(f) It is an affirmative defense if:

(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) 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 Section 8, Article I, Texas Constitution.

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

(i) Notwithstanding any other law, a court may not award

costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE

LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to

assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section

if:

(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

(c) A court may not find an undue burden under Subsection

(b) unless the defendant introduces evidence proving that:

(1) an award of relief will prevent a woman or a group of women from obtaining an abortion; or

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

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

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

(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

(e) The affirmative defense under Subsection (b) is not



available if the United States Supreme Court 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 171.208 occurred before the Supreme Court overruled either of those decisions.

(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 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.

Sec. 171.210. CIVIL LIABILITY: VENUE.

(a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under

Section 171.208 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 171.208 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.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any

conflicting law, including:

(1) the Uniform Declaratory Judgments Act; and

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

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

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

Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v.*

*Jane L.*

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 chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, 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 chapter 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 chapter 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 present an undue burden.

(b-1) If any court declares or finds a provision of this  
chapter facially unconstitutional, when discrete applications of  
that provision can be enforced against a person, group of persons,  
or circumstances without violating the United States Constitution  
and Texas Constitution, those applications shall be severed from  
all remaining applications of the provision, and the provision  
shall be interpreted 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 the United States Constitution and Texas Constitution.

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

(d) If any provision of this chapter 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.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (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.

SECTION 4. Chapter 30, Civil Practice and Remedies Code, is

amended by adding Section 30.022 to read as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS

CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a



prevailing party if a state or federal court:

(1) dismisses any claim or cause of action brought

against the party that seeks the declaratory or injunctive relief

described by Subsection (a), regardless of the reason for the

dismissal; or

(2) enters judgment in the party's favor on any such

claim or cause of action.

(c) Regardless of whether a prevailing party sought to

recover costs or attorney's fees in the underlying action, a

prevailing party under this section may bring a civil action to

recover costs and attorney's fees against a person, including an

entity, attorney, or law firm, that sought declaratory or

injunctive relief described by Subsection (a) not later than the

third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection

(b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) It is not a defense to an action brought under

Subsection (c) that:

(1) a prevailing party under this section failed to

seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to

recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any

provisions of this section are invalid, unconstitutional, or

preempted by federal law, notwithstanding the doctrines of issue or

claim preclusion.

SECTION 5. Subchapter C, Chapter 311, Government Code, is

amended by adding Section 311.036 to read as follows:

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A

statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

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

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not

violate the United States Constitution and Texas Constitution shall  
be severed from the unconstitutional applications and shall remain  
enforceable, notwithstanding any other law, and the statute shall  
be interpreted as if containing language limiting the statute's  
application to the persons, group of persons, or circumstances for  
which the statute's application will not violate the United States  
Constitution and Texas Constitution.

SECTION 6. Section 171.005, Health and Safety Code, is  
amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE;  
EXCEPTION. The commission [~~department~~] shall enforce this chapter  
except for Subchapter H, which shall be enforced exclusively  
through the private civil enforcement actions described by Section  
171.208 and may not be enforced by the commission.

SECTION 7. Subchapter A, Chapter 171, Health and Safety

Code, is amended by adding Section 171.008 to read as follows:

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

(b) A physician shall:

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

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

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

(1) if the abortion is performed or induced to

preserve the health of the pregnant woman, execute a written

document that:

(A) specifies the medical condition the abortion

is asserted to address; and

(B) provides the medical rationale for the

physician's conclusion that the abortion is necessary to address

the medical condition; or

(2) for an abortion other than an abortion described

by Subdivision (1), specify in a written document that maternal

health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document

described by Subsection (c) in the physician's practice records.

SECTION 8. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a) Consent to an abortion is voluntary and informed only

if:

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

(A) the physician's name;

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

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

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

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

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

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

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

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



(3) the physician who is to perform or induce the

abortion or the physician's agent:

(A) provides the pregnant woman with the printed

materials described by Section 171.014; and

(B) informs the pregnant woman that those

materials:

(i) have been provided by the commission

~~[Department of State Health Services]~~;

(ii) are accessible on an Internet website

sponsored by the commission ~~[department]~~;

(iii) describe the unborn child and list

agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer

sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered

to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

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

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

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

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

(5) before receiving a sonogram under Subdivision

(4)(A) and before the abortion is performed or induced and before

any sedative or anesthesia is administered, the pregnant woman  
completes and certifies with her signature an election form that  
states as follows:

"ABORTION AND SONOGRAM ELECTION

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

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN  
ABORTION.

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

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE  
SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE  
HEARTBEAT.

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

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

\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND

WITHOUT COERCION.

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

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

\_\_\_\_\_  
SIGNATURE

DATE";

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy

of the signed, written certification required by Subdivision (5);

and

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

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

(c) The report must include:

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

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

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if

the patient did not survive, the cause of death;

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

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

[~~and~~]

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).



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

SECTION 11. The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 12. This Act takes effect September 1, 2021.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on  
March 30, 2021, by the following vote: Yeas 19, Nays 12; and that  
the Senate concurred in House amendments on May 13, 2021, by the  
following vote: Yeas 18, Nays 12.

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Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with  
amendments, on May 6, 2021, by the following vote: Yeas 83,  
Nays 64, one present not voting.

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Chief Clerk of the House

Approved:

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Date

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Governor



# Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp  
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor  inquiries"
- 5. City Attorney Request.
- 6. Call File No.  from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Supervisors Melgar; Ronen, Stefani, Chan, Walton, Safai, Mandelman, Haney, Preston

Subject:

Abortion is Healthcare - Condemning Texas Senate Bill 8

The text is listed:

Resolution recognizing Abortion as Healthcare, objecting to Texas Senate Bill 8 and urging approaches that uplift autonomy for women and other birthing people; urging the Biden Administration and Congress to pass legislation protecting Reproductive Rights; and declaring the City and County of San Francisco a Champion of Reproductive Freedom and Justice.

Signature of Sponsoring Supervisor: /s/Myrna Melgar

For Clerk's Use Only