

# Texas Heartbeat Law

Learn about the new pro-life law protecting the unborn in Texas.

*The Texas Heartbeat Bill, SB 8, passed the Texas Legislature with bipartisan support and was signed into law by Gov. Greg Abbott on May 19, 2021. This new law requires physicians to check for a baby's heartbeat and inform the mother if the presence of a heartbeat is detected. Once a heartbeat is detected, the doctor must take all necessary steps to protect the life of the child.*

## Texas Heartbeat Law Overview:

- Requires physicians to check for a baby's heartbeat and inform the mother if the presence of a heartbeat is detected.
- Once a heartbeat is detected, the doctor must take all necessary steps to protect the life of the child.
- Creates civil liability for aiding and abetting an abortion.
- Relies on civil enforcement of the law by citizens, making it virtually impossible for a court to strike down the law as "unconstitutional."

## Background on Texas Pro-Life Statutes:

- The Texas Penal Code of 1925 addressed abortion with statutes that prohibited and criminalized the act of abortion.
- In 1973, right before the *Roe v. Wade* decision, the Texas Legislature overhauled the state penal code. Many statutes were repealed or moved, but the abortion statutes were never repealed.
- The Texas Heartbeat Law references these pre-*Roe* statutes and acknowledges they could still be enforced.

## How is Texas' heartbeat law different from other states?

The legislation enacting this law was drafted in a manner to prevent anyone from suing the state or its officials to enjoin (stop) the enforcement of the statute. The law's strength lies in the fact that it is entirely enforceable by private citizens. Without a duty to enforce the statute, courts cannot preemptively prevent officers of the state from enforcing it.

## How early can you detect a baby's heartbeat?

Current technology can detect baby's beating heart between 6-12 weeks. Texas law previously allowed for abortions as late as 20 weeks.

## How can this bill ban abortion in Texas when *Roe v. Wade* is still out there?

*Roe v. Wade* should be overturned. However, the legal analysis of abortion has changed since the Supreme Court's decision in that case. State laws banning or regulating abortion may now be easier to sustain. For example, the Supreme Court upheld the federal Partial-Birth Abortion Ban Act in *Gonzales v. Carhart* after determining that the ban did not impose an "undue burden."

## Who could be implicated in "aiding and abetting" an abortion?

Any person who "aids or abets the performance or inducement of an abortion." This includes paying for, or reimbursing the costs of an abortion. Aiding and abetting in Texas, sometimes called "secondary liability," generally means that a defendant substantially assisted and encouraged someone in a wrongful act that harmed the plaintiff.