

88R6630 JG/SCL-F

By: Toth

H.B. No. 2690

A BILL TO BE ENTITLED
AN ACT

relating to abortion, including civil liability for distribution of abortion-inducing drugs and duties of Internet service providers; creating a criminal offense; 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 Women and Child Safety Act.

SECTION 2. The legislature finds that:

- (1) human life begins at fertilization;
- (2) abortion is a murderous act of violence that purposefully and knowingly terminates a human life in the womb;
- (3) unborn human beings are entitled to the full and equal protection of the laws that prohibit violence against other human beings;
- (4) the United States Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, No. 19-1392 (U.S. June 24, 2022), correctly overruled the lawless and unconstitutional pronouncements in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833 (1992), which had invented and perpetuated a supposed constitutional right to abortion that cannot be found anywhere in the text of the United States Constitution;
- (5) so-called abortion funds that operate in this state have been funding and otherwise aiding or abetting criminal abortions performed in violation of the laws of this state, exposing themselves and each of their donors to felony criminal prosecution;
- (6) the abortion funds and their donors are not and never were protected by an injunction in any abortion-related case because they are not parties to those cases, and there has never been an injunction that restrains a state official from prosecuting abortion funds and their donors who aided or abetted abortions performed in violation of the laws of this state;
- (7) the abortion funds and their donors are not and never were protected from criminal prosecution by *Roe v. Wade*, 410 U.S. 113 (1973), because:
 - (A) there is no constitutional right to pay for another person's abortion;
 - (B) abortion funds and their donors lack third-party standing to assert the supposed constitutional rights of women seeking abortions; and
 - (C) any immunity from prosecution that the abortionist might have enjoyed on account of *Roe* does not preclude the imposition of accomplice liability on abortion funds and their donors;
- (8) it is a federal crime to mail abortion-inducing drugs or to receive them in the mail, punishable by five years imprisonment, under 18 U.S.C. Section 1461;
- (9) it is also a federal crime to transport abortion-inducing drugs in interstate or foreign commerce under 18 U.S.C. Section 1462(c);
- (10) these federal statutes are fully enforceable now that *Roe* has been overruled, and the statute of limitations for each of these crimes is five years;
- (11) violations of 18 U.S.C. Sections 1461-1462 are predicate offenses under the federal Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. Section 1961 et seq.), which

exposes distribution networks of abortion-inducing drugs and their donors to civil racketeering liability as well as criminal prosecution as a racketeering enterprise under federal law;

(12) the legislature calls on the attorney general and each district attorney in this state to investigate and prosecute abortion funds and each of their donors for aiding or abetting criminal abortion in this state in violation of the laws of this state; and

(13) the legislature calls on state and federal prosecutors in this state to investigate and prosecute every distribution network for abortion-inducing drugs under federal racketeering laws as well as 18 U.S.C. Sections 1461-1462.

SECTION 3. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 171A to read as follows:

CHAPTER 171A. ABORTION-INDUCING DRUGS AND FACILITATION OF
ABORTION; ENFORCEMENT OF ABORTION LAWS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171A.001. DEFINITIONS. In this chapter:

.(1) "Abortion" means the act of using, prescribing, administering, procuring, or selling an instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate a pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of a living human being in the womb. The term does not include:

.(A) in vitro fertilization or fertility treatments of any type;

.(B) the use, prescription, administration, procuring, or selling of an emergency contraceptive, including Plan B and morning-after pills, intrauterine devices, or any other type of contraceptive; or

.(C) an act performed with the purpose to:
.(i) save the life or preserve the health of the unborn child;
.(ii) remove a dead unborn child caused by spontaneous abortion; or
.(iii) remove or treat an ectopic pregnancy.

.(2) "Abortion-inducing drug" means a drug or medication, including mifepristone and misoprostol, that is used to terminate the life of an unborn child. The term does not include:

.(A) an emergency contraceptive, including Plan B and morning-after pills, intrauterine devices, or any other type of contraceptive; or

.(B) drugs or medications that are possessed or distributed for a purpose that does not include the termination of a pregnancy, including for the treatment of an unrelated medical condition.

.(3) "Abortion funds" means a corporation, organization, government, governmental agency, business trust, estate, trust, partnership, association, or any other legal entity that:

.(A) exists for the purpose of aiding or abetting elective abortions; and

.(B) pays for, reimburses, or subsidizes in any way the costs associated with obtaining an elective abortion.

.(4) "Abortion provider" means a person who performs elective abortions.

.(5) "Elective abortion" means an abortion other than those performed or induced in response to a medical emergency.

.(6) "Fertilization" means the fusion of a human spermatozoon with a human ovum.

.(7) "Governmental entity" means this state, a state agency, or a political subdivision of this state.

.(8) "Human being" means an individual member of the species homo sapiens at any state of development beginning at

fertilization.

(9) "Information content provider" means a person who is responsible, wholly or partly, for the creation or development of information provided through the Internet or any other interactive computer service.

(10) "Interactive computer service" means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(11) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman 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 itself.

(12) "Unborn child" means an individual organism of the species homo sapiens in any stage of gestation from fertilization until live birth.

(13) "Woman" means an individual whose biological sex is female, including an individual with XX chromosomes and an individual with a uterus, regardless of any gender identity that the individual attempts to assert or claim.

SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING DRUGS. (a) Except as provided by Subsection (b), a person may not:

(1) manufacture, possess, or distribute an abortion-inducing drug in this state;

(2) mail, transport, deliver, or provide an abortion-inducing drug in any manner to or from any person or location in this state;

(3) provide information on how to obtain an abortion-inducing drug;

(4) create, edit, upload, publish, host, maintain, or register a domain name for an Internet website, platform, or other interactive computer service that assists or facilitates a person's effort in obtaining an abortion-inducing drug;

(5) create, edit, program, or distribute any application or software for use on a computer or an electronic device that is intended to enable individuals to obtain an abortion-inducing drug or to facilitate an individual's access to an abortion-inducing drug; or

(6) engage in conduct that would make a person criminally responsible under Chapter 7, Penal Code, as a party to a criminal act described by Subdivision (1) or (2).

(b) Notwithstanding any other law, Subsection (a) does not prohibit:

(1) 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 protected by Section 8, Article I, Texas Constitution;

(2) conduct this state is prohibited from regulating under federal law, including the United States Constitution;

(3) conduct engaged in by a pregnant woman who aborts or attempts to abort the woman's unborn child;

(4) possessing, distributing, mailing, transporting, delivering, or providing an abortion-inducing drug for a purpose that does not include performing, inducing, or attempting an abortion;

(5) possessing an abortion-inducing drug for purposes of entrapping a person that violates this section;

(6) conduct engaged in by a person as directed by a federal agency, contractor, or employee to carry out a duty under federal law, if prohibiting that conduct would violate the

doctrines of preemption or intergovernmental immunity; or
(7) conduct described by Section 171A.201(a)(1), (2),
or (3).

SUBCHAPTER C. CIVIL LIABILITY FOR DISTRIBUTION OF
ABORTION-INDUCING DRUGS

Sec. 171A.101. CIVIL ACTION FOR DISTRIBUTION OF
ABORTION-INDUCING DRUGS. (a) Notwithstanding any other law and
except as provided by this section, a person who manufactures,
distributes, mails, transports, delivers, or provides an
abortion-inducing drug in violation of Section 171A.051 or who aids
or abets the manufacture, distribution, mailing, transportation,
delivery, or provision of an abortion-inducing drug in violation of
Section 171A.051, or who otherwise engages in any conduct
prohibited by Section 171A.051 is strictly and jointly and
severally liable for:

(1) the wrongful death of an unborn child or pregnant
woman from the use of the abortion-inducing drug; and

(2) personal injury of an unborn child or pregnant
woman from the use of the abortion-inducing drug.

(b) A claimant may not bring an action under this section if
the action is preempted by 47 U.S.C. Section 230(c).

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

(1) against the woman who used or sought to obtain
abortion-inducing drugs to abort or attempt to abort her unborn
child;

(2) against a person that acted at the behest of a
federal agency, contractor, or employee who is carrying out duties
under federal law if the imposition of liability would violate the
doctrines of preemption or intergovernmental immunity; or

(3) by any person who impregnated the woman who used
abortion-inducing drugs through conduct constituting an offense
under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code,
or by another person who acts in concert or participation with that
person.

(d) Notwithstanding any other law, including rules of civil
procedure adopted under Chapter 26, Civil Practice and Remedies
Code, an action brought under this section may not be litigated on
behalf of a claimant class or a defendant class, and no court may
certify a class in the action.

Sec. 171A.102. DEFENSES. (a) It is an affirmative defense
to an action brought under Section 171A.101 that the defendant:

(1) was unaware that the defendant was engaged in the
conduct described by Section 171A.101(a); and

(2) took every reasonable precaution to ensure that
the defendant would not manufacture, distribute, mail, transport,
deliver, provide, or aid or abet the manufacture, distribution,
mail, transportation, delivery, or provision of abortion-inducing
drugs.

(b) A defendant has the burden of proving an affirmative
defense under Subsection (a) by a preponderance of the evidence.

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

(1) ignorance or mistake of law;

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

(3) a defendant's reliance on a court decision that has
been vacated, reversed, or overruled on appeal or by a subsequent
court, even if that court decision had not been vacated, reversed,
or overruled when the cause of action accrued;

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

(5) a defendant's reliance on a federal statute,

agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

.(6) non-mutual issue preclusion or non-mutual claim preclusion;

.(7) the consent of the claimant or the unborn child's mother to the abortion;

.(8) contributory or comparative negligence;

.(9) assumption of risk; or

.(10) a claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

Sec. 171A.103. APPORTIONED LIABILITY. Notwithstanding any other law, if a claimant who brings an action under Section 171A.101 is unable to identify the specific manufacturer of the abortion-inducing drug that caused the death or injury that is the basis for the action, the liability is apportioned among all manufacturers of abortion-inducing drugs in proportion to each manufacturer's share of the market for abortion-inducing drugs.

Sec. 171A.104. STATUTE OF LIMITATIONS. Notwithstanding any other law, a person may bring an action under Section 171A.101 not later than the sixth anniversary of the date the cause of action accrues.

Sec. 171A.105. WAIVER PROHIBITED. A waiver or purported waiver of the right to bring an action under Section 171A.101 is void as against public policy and is not enforceable in any court.

Sec. 171A.106. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to impose liability on 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 protected by Section 8, Article I, Texas Constitution.

Sec. 171A.107. JURISDICTION; APPLICABILITY OF STATE LAW. (a) Notwithstanding any other law, including Subchapter C, Chapter 17, Civil Practice and Remedies Code, the courts of this state have personal jurisdiction over a defendant sued under Section 171A.101 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

.(b) Notwithstanding any other law, the law of this state applies to the use of an abortion-inducing drug by a resident of this state, regardless of where the use of the drug occurs, and to an action brought under Section 171A.101 to the maximum extent permitted by the United States Constitution.

.(c) Chapters 27 and 110, Civil Practice and Remedies Code, do not apply to an action brought under Section 171A.101.

SUBCHAPTER D. PRIVATE CIVIL ENFORCEMENT OF PROHIBITIONS RELATING TO ABORTION-INDUCING DRUGS

Sec. 171A.151. CIVIL ACTION AUTHORIZED. (a) Except as provided by this section, a person, other than this state, a political subdivision of this state, and an officer or employee of this state or a political subdivision of this state, has standing to bring and may bring a civil action against a person who:

.(1) violates Section 171A.051; or

.(2) intends to violate Section 171A.051.

.(b) A claimant may not bring an action under this section if the action is preempted by 47 U.S.C. Section 230(c).

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

.(1) against the woman who used or sought to obtain abortion-inducing drugs to abort or attempt to abort her unborn child;

.(2) against a person that acted at the behest of a

federal agency, contractor, or employee who is carrying out duties under federal law if the imposition of liability would violate the doctrines of preemption or intergovernmental immunity; or

.(3) by any person who impregnated the woman who used or sought to obtain abortion-inducing drugs through conduct constituting an offense under Section 21.02, 21.11, 22.011, 22.021, or 25.02, Penal Code, or by another person who acts in concert or participation with that person.

.(d) Notwithstanding any other law, including rules of civil procedure adopted under Chapter 26, Civil Practice and Remedies Code, an action brought under this section may not be litigated on behalf of a claimant class or a defendant class, and no court may certify a class in the action.

Sec. 171A.152. DEFENSES. (a) It is an affirmative defense to an action brought under Section 171A.151 that the defendant:

.(1) was unaware that the defendant was engaged in the conduct prohibited by Section 171A.051; and

.(2) took every reasonable precaution to ensure that the defendant would not violate Section 171A.051.

.(b) A defendant has the burden of proving an affirmative defense under Subsection (a) by a preponderance of the evidence.

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

.(1) ignorance or mistake of law;

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

.(3) a defendant's reliance on a court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;

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

.(5) a defendant's reliance on a federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;

.(6) non-mutual issue preclusion or non-mutual claim preclusion;

.(7) the consent of the claimant or the unborn child's mother to the abortion;

.(8) contributory or comparative negligence;

.(9) assumption of risk; or

.(10) a claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

Sec. 171A.153. STATUTE OF LIMITATIONS. Notwithstanding any other law, a person may bring an action under Section 171A.151 not later than the sixth anniversary of the date the cause of action accrues.

Sec. 171A.154. REMEDIES. (a) Except as provided by Subsection (c), if a claimant prevails in an action brought under Section 171A.151, the court shall award:

.(1) injunctive relief sufficient to prevent the defendant from violating Section 171A.051;

.(2) nominal damages or compensatory damages if the claimant has suffered injury or harm from the defendant's conduct, including loss of consortium and emotional distress;

.(3) statutory damages in an amount of not less than \$10,000 for each violation of Section 171A.051; and

.(4) costs and reasonable attorney's fees.

.(b) A court may not award relief under Subsection (a) (3) or

(a)(4) in response to a violation of Section 171A.051 if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (a)(3) in another action for that particular violation.

(c) A court may not award costs or attorney's fees to a defendant against whom an action is brought under Section 171A.151.

Sec. 171A.155. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to impose liability on 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 protected by Section 8, Article I, Texas Constitution.

Sec. 171A.156. PUBLIC ENFORCEMENT PROHIBITED. (a) Notwithstanding any other law, this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state may not:

(1) act in concert or participation with a claimant bringing an action under Section 171A.151;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a claimant bringing an action under Section 171A.151;

(3) make any attempt to control or influence a person's decision to bring an action under Section 171A.151 or that person's conduct of the litigation; or

(4) intervene in an action brought under Section 171A.151.

(b) This section does not prohibit a governmental entity or officer or employee of a governmental entity from filing an amicus curiae brief in an action brought under Section 171A.151 if the entity, officer, or employee does not act in concert or participation with the claimant.

Sec. 171A.157. JURISDICTION; APPLICABILITY OF STATE LAW. (a) Notwithstanding any other law, including Subchapter C, Chapter 17, Civil Practice and Remedies Code, the courts of this state have personal jurisdiction over a defendant sued under Section 171A.151 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

(b) Notwithstanding any other law, the law of this state applies to an action brought under Section 171A.151 to the maximum extent permitted by the United States Constitution.

(c) Chapters 27 and 110, Civil Practice and Remedies Code, do not apply to an action brought under Section 171A.151.

SUBCHAPTER E. PRIVATE CIVIL ENFORCEMENT AGAINST INTERACTIVE COMPUTER SERVICES FACILITATING ABORTION

Sec. 171A.201. CIVIL ACTION AGAINST INTERACTIVE COMPUTER SERVICE PROVIDER. (a) A person, other than this state, a political subdivision of this state, and an officer or employee of this state or a political subdivision of this state, has standing to bring and may bring a civil action against a person who provides or maintains:

(1) an interactive computer service that allows residents of this state to access information or material that assists or facilitates efforts to obtain elective abortions or abortion-inducing drugs;

(2) a platform for downloading any application or software for use on a computer or electronic device that is designed to assist or facilitate efforts to obtain elective abortions or abortion-inducing drugs; or

(3) a platform that allows or enables those who provide or aid or abet elective abortions, or those who manufacture, distribute, mail, transport, deliver, or provide abortion-inducing drugs, to collect money, digital currency, resources, or any other thing of value in connection with that conduct.

(b) Notwithstanding any other law, including rules of civil

procedure adopted under Chapter 26, Civil Practice and Remedies Code, an action brought under this section may not be litigated on behalf of a claimant class or a defendant class, and no court may certify a class in the action.

Sec. 171A.202. DEFENSES. (a) It is an affirmative defense to an action brought under Section 171A.201 that the defendant:

(1) was unaware that the defendant's interactive computer service or platform was being used to assist or facilitate efforts to obtain elective abortions or abortion-inducing drugs; and

(2) on learning that the defendant's interactive computer service or platform was being used to assist or facilitate efforts to obtain elective abortions or abortion-inducing drugs, took prompt action to:

(A) block access to any information, material, application, or software that assists or facilitates efforts to obtain elective abortions or abortion-inducing drugs; and

(B) block those who provide or aid or abet elective abortions and those who manufacture, distribute, mail, transport, deliver, or provide abortion-inducing drugs, from collecting money, digital currency, resources, or any other thing of value through its interactive computer service or platform.

(b) A defendant has the burden of proving an affirmative defense under Subsection (a) by a preponderance of the evidence.

Sec. 171A.203. REMEDIES. (a) Except as provided by Subsection (b), if a claimant prevails in an action brought under Section 171A.201, the court shall award only declaratory or injunctive relief. A court may not award:

(1) damages in the action, even if the claimant demonstrates harm from the defendant's conduct; or

(2) a prevailing claimant's attorney's fees or costs.

(b) A court may not award relief under Subsection (a) if the action was brought in response to:

(1) the exercise of a constitutional right that belongs personally to the defendant;

(2) conduct engaged in at the direction of a federal agency, contractor, or employee who is carrying out a duty under federal law, if the relief authorized by Subsection (a) would violate the doctrines of preemption or intergovernmental immunity; or

(3) conduct engaged in by a woman who aborted or attempted to abort her unborn child, if that woman is the named defendant in the action.

Sec. 171A.204. RELATION TO OTHER INFORMATION CONTENT PROVIDERS. A person who engages in conduct described by Section 171A.201(a)(1), (2), or (3) may not be:

(1) held vicariously liable for nominal, statutory, or compensatory damages incurred by another information content provider;

(2) held liable or legally responsible for the conduct of a publisher or speaker of any information provided by another information content provider; or

(3) treated as the speaker or publisher of any information provided by another information content provider under any provision of the laws of this state.

Sec. 171A.205. EXCLUSIVE ENFORCEMENT; EFFECT OF OTHER LAW.

(a) Notwithstanding any other law, conduct described by Section 171A.201(1), (2), or (3) is not subject to criminal, civil, or administrative liability except solely through the private civil action described by Section 171A.201. This state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state may not take a direct or indirect enforcement action under this subchapter against any person, by any means.

(b) Except as provided by Subsection (c), a person may not

use conduct described by Section 171A.201(1), (2), or (3) as a justification for the enforcement of any other law or any type of adverse consequence under any other law except as provided by Section 171A.201.

(c) This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by that other law or regulation.

Sec. 171A.206. PUBLIC ENFORCEMENT PROHIBITED. (a) Notwithstanding any other law, this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state may not:

(1) act in concert or participation with a claimant bringing an action under Section 171A.201;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a claimant bringing an action under Section 171A.201;

(3) make any attempt to control or influence a person's decision to bring an action under Section 171A.201 or that person's conduct of the litigation; or

(4) intervene in an action brought under Section 171A.201.

(b) This section does not prohibit a governmental entity or officer or employee of a governmental entity from filing an amicus curiae brief in an action brought under Section 171A.201 if the entity, officer, or employee does not act in concert or participation with the claimant.

Sec. 171A.207. JURISDICTION; APPLICABILITY OF STATE LAW. (a) Notwithstanding any other law, including Subchapter C, Chapter 17, Civil Practice and Remedies Code, the courts of this state have personal jurisdiction over a defendant sued under Section 171A.201 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

(b) Notwithstanding any other law, the law of this state applies to an action brought under Section 171A.201 to the maximum extent permitted by the United States Constitution.

(c) Chapters 27 and 110, Civil Practice and Remedies Code, do not apply to an action brought under Section 171A.151.

Sec. 171A.208. INTERACTIVE COMPUTER SERVICE USER OR PROVIDER IMMUNITY FOR CERTAIN ACTIONS. Notwithstanding any other law, a provider or user of an interactive computer service has absolute and nonwaivable immunity from liability or suit for:

(1) an action taken to restrict access to or availability of information or material that assists or facilitates access to elective abortions or abortion-inducing drugs, regardless of whether the information or material is constitutionally protected;

(2) an action taken to enable or make available to information content providers or others the technical means to restrict access to information or material described by Subdivision (1); or

(3) a denial of service to persons who provide or aid or abet elective abortions or who manufacture, mail, distribute, transport, or provide abortion-inducing drugs.

SUBCHAPTER F. PROVISIONS GENERALLY APPLICABLE TO CIVIL LIABILITY FOR FACILITATING ABORTION

Sec. 171A.251. AFFIRMATIVE DEFENSE. (a) A defendant against whom an action is brought under Section 171A.101, 171A.151, or 171A.201 may assert an affirmative defense to liability under this section if:

(1) the imposition of civil liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(2) the defendant:

(A) has standing to assert the rights of a third party under the tests for third-party standing established by the

United States Supreme Court; and

.(B) demonstrates that the imposition of civil liability on the defendant will violate constitutional or federally protected rights belonging to a third party.

.(b) The defendant has the burden of proving an affirmative defense described by Subsection (a) by a preponderance of the evidence.

Sec. 171A.252. CONSTRUCTION OF CHAPTER WITH RESPECT TO CIVIL LIABILITY AND ENFORCEMENT. This chapter may not be construed to limit or preclude a defendant from asserting the unconstitutionality of any provision or application of the laws of this state as a defense to liability under Section 171A.101, 171A.151, or 171A.201 or from asserting any other defense that might be available under any other source of law.

Sec. 171A.253. APPLICATION OF OTHER LAW. Notwithstanding any other law, a court may not apply the law of another state or jurisdiction to any civil action brought under Section 171A.101, 171A.151, or 171A.201 unless Article VI of the United States Constitution compels it to do so.

Sec. 171A.254. VENUE. (a) Notwithstanding any other law, a civil action brought under Section 171A.101, 171A.151, or 171A.201 must 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 a defendant's residence at the time the cause of action accrued if a defendant is an individual;

.(3) the county of the principal office in this state of a defendant that is not an individual; or

.(4) the county of the claimant's residence if the claimant is an individual residing in this state.

.(b) If a civil action is brought under Section 171A.101, 171A.151, or 171A.201 in a venue described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171A.255. PROTECTION FROM COUNTER ACTIONS. If an action brought against a person or liability imposed in a judgment entered against a person is wholly or partly based on the person's decision to bring or threat to bring an action under Section 171A.101, 171A.151, or 171A.201, the person may recover damages from the claimant who brought the action or obtained the judgment or who has sought to enforce the judgment. The damages include:

.(1) compensatory damages created by the action or judgment, including money damages in an amount of the judgment and costs, expenses, and reasonable attorney's fees spent in defending the action;

.(2) costs, expenses, and reasonable attorney's fees incurred in bringing an action under this section; and

.(3) additional statutory damages in an amount of not less than \$100,000.

SUBCHAPTER G. INTERNET SERVICE PROVIDER DUTIES

Sec. 171A.301. RESTRICTIONS ON ACCESS TO CERTAIN INFORMATION AND MATERIALS ACCESSIBLE THROUGH CERTAIN INTERNET WEBSITES. Each Internet service provider that provides Internet services in this state shall make every reasonable and technologically feasible effort to block Internet access to information or material intended to assist or facilitate efforts to obtain an elective abortion or an abortion-inducing drug, including information or material accessible through:

.(1) the following Internet websites:

.(A) aidaccess.org;

.(B) heyjane.co;

.(C) plancpills.org;

.(D) mychoix.co;

.(E) justthepill.com; and

.(F) carafem.org;

(2) an Internet website, platform, or other interactive computer service operated by or on behalf of an abortion provider or abortion fund;

(3) an Internet website, platform, or other interactive computer service for downloading any application or software for use on a computer or electronic device that is designed to assist or facilitate efforts to obtain an elective abortion or an abortion-inducing drug; or

(4) an Internet website, platform, or other interactive computer service that allows or enables those who provide or aid or abet elective abortions, or those who manufacture, mail, distribute, transport, or provide abortion-inducing drugs, to collect money, digital currency, resources, or any other thing of value.

Sec. 171A.302. NOTIFICATION TO INTERNET SERVICE PROVIDER. A person who becomes aware that information or material described by Section 171A.301 is accessible through an Internet service provider that provides Internet services in this state may notify the provider and request that the provider block access to the information or material in accordance with that section. A person may provide the notification by:

(1) calling the provider's customer support number and providing a precise description and location of the information or material; or

(2) mailing a letter to the provider that includes a precise description and location of the information or material.

Sec. 171A.303. PUBLIC ENFORCEMENT PROHIBITED. (a) Notwithstanding any other law, direct or indirect enforcement of this subchapter may not be taken or threatened by this state or a political subdivision of this state, or by any officer, employee, or agent of this state or a political subdivision of this state, by any means.

(b) This state, a political subdivision of this state, or an officer, employee, or agent of this state or a political subdivision of this state may request or encourage an Internet service provider to comply with the requirements of this subchapter.

Sec. 171A.304. LIABILITY; RECOVERY OF DAMAGES. (a) Notwithstanding any other law, an Internet service provider that provides Internet services in this state has absolute and nonwaivable immunity from liability or suit for:

(1) an action taken to comply with the requirements of this subchapter, or to restrict access to or availability of the information or material described by Section 171A.301;

(2) an action taken to enable or make available to information content providers or others the technical means to restrict access to information or material described by Section 171A.301; or

(3) a denial of service to persons who use or seek to use the Internet to make available information or material described by Section 171A.301.

(b) An Internet service provider against whom an action is brought or a judgment is entered in state or federal court that is wholly or partly based on the provider's compliance with the requirements of this subchapter may recover damages from a claimant that brought the action or obtained the judgment or who has sought to enforce the judgment. The damages include:

(1) compensatory damages created by the action or judgment, including money damages in an amount of the judgment, and expenses and reasonable attorney's fees spent in defending the action;

(2) costs, expenses, and reasonable attorney's fees incurred in bringing an action under this section; and

(3) additional statutory damages in an amount of not less than \$100,000.

SUBCHAPTER H. CRIMINAL OFFENSES

Sec. 171A.351. OFFENSE: PAYING OR REIMBURSING ABORTION COSTS. (a) A person that knowingly pays for or reimburses the costs associated with obtaining an elective abortion performed on a pregnant woman commits an offense. An offense under this subsection is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

(b) The prohibition under Subsection (a) applies regardless of:

(1) the individual on whom the elective abortion is performed;

(2) the location at which the elective abortion is performed;

(3) the law of the jurisdiction in which the elective abortion is performed; and

(4) whether the payment or reimbursement is provided directly or through an intermediary.

(c) The prohibition under Subsection (a) does not apply to a pregnant woman on whom an elective abortion is performed or attempted.

(d) The prohibition under Subsection (a) applies extraterritorially to the maximum extent permitted by the United States Constitution or the Texas Constitution.

Sec. 171A.352. OFFENSE: DESTROYING EVIDENCE OF ABORTION. (a) A person commits an offense if the person knowingly or recklessly conceals, destroys, or spoliates evidence of an elective abortion performed or attempted:

(1) in this state; or

(2) on a resident of this state, regardless of whether the person knew or should have known that the elective abortion was performed or attempted on the resident.

(b) An offense under Subsection (a) is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

(c) The prohibition under Subsection (a) does not apply to a pregnant woman on whom an elective abortion is performed or attempted.

(d) The prohibition under Subsection (a) applies extraterritorially to the maximum extent permitted by the United States Constitution or the Texas Constitution.

SUBCHAPTER I. PROVISIONS RELATING TO ENFORCEMENT OF ABORTION LAWS

Sec. 171A.401. DEFINITION. In this subchapter, "abortion law" means any law of this state regulating abortion, including this chapter and Chapter 6-1/2, Title 71, Revised Statutes.

Sec. 171A.402. STATUTE OF LIMITATIONS. Notwithstanding any other law, there is no applicable statute of limitations for an offense committed under an abortion law.

Sec. 171A.403. CONCURRENT JURISDICTION OF ATTORNEY GENERAL. Notwithstanding any other law, the attorney general has concurrent jurisdiction to prosecute any abortion law and may authorize a district attorney to investigate or prosecute a violation of an abortion law if a local district attorney fails or refuses to investigate or prosecute the violation.

Sec. 171A.404. ATTORNEY GENERAL ACTION FOR VIOLATION OF CERTAIN ABORTION LAWS. (a) The attorney general has parens patriae standing to bring an action under this section on behalf of unborn children of residents of this state.

(b) The attorney general may bring an action for damages or injunctive relief on behalf of an unborn child of a resident of this state against a person who violates any abortion law of this state except for Subchapter H, Chapter 171, or Subchapter B, C, or E of this chapter.

Sec. 171A.405. FEE SHIFTING. (a) Notwithstanding any other law, a person, including an entity, attorney, or law firm, who

brings an action seeking declaratory or injunctive relief to prevent a person, including this state, a political subdivision of this state, or an officer, employee, or agent of this state or a political subdivision of this state, from enforcing or bringing an action to enforce a law, including a statute, ordinance, rule, or regulation, that regulates or restricts abortion or that limits taxpayer funding for persons that perform or promote abortions in a state or federal court or who represents a litigant seeking such relief in a state or federal court is jointly and severally liable to pay the costs and reasonable attorney's fees of the prevailing party in the action seeking declaratory or injunctive relief.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) dismisses a 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 that claim or cause of action.

(c) A prevailing party may recover costs and reasonable attorney's fees under this section only to the extent that those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed.

(d) 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, who 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.

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

SUBCHAPTER J. IMMUNITY AND LIMITS ON STATE-COURT JURISDICTION

Sec. 171A.451. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY. (a) Except as provided by Subsection (b) but notwithstanding any other law, the state has sovereign immunity, a political subdivision of this state has governmental immunity, and an officer or employee of this state or a political subdivision of this state has official immunity in an action, claim, counterclaim, or any other type of legal or equitable action that:

(1) challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise; or

(2) seeks to prevent or enjoin this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state from:

(A) enforcing any provision or application of this chapter; or

(B) hearing, adjudicating, or docketing a civil action brought under Section 171A.101, 171A.151, or 171A.201.

(b) Subsection (a) does not apply to the extent that immunity has been abrogated or preempted by federal law in a manner consistent with the United States Constitution.

(c) Sovereign immunity conferred by this section includes

the constitutional sovereign immunity recognized by the United States Supreme Court, which applies in both state and federal court and may not be abrogated by Congress or by a state or federal court except under legislation authorized by:

(1) Section 5 of the Fourteenth Amendment, United States Constitution;

(2) the Bankruptcy Clause of Article I, United States Constitution; or

(3) Congress's powers to raise and support armies and to provide and maintain a navy.

Sec. 171A.452. APPLICABILITY OF IMMUNITY. Notwithstanding any other law, the immunity conferred by Section 171A.451 applies to every court, both state and federal, and in every type of adjudicative proceeding.

Sec. 171A.453. CONSTRUCTION OF CHAPTER. This chapter may not be construed to prevent a litigant from asserting the invalidity or unconstitutionality of a provision or application of this chapter as a defense to an action, claim, or counterclaim brought against the litigant.

Sec. 171A.454. WAIVER OF IMMUNITY. (a) Notwithstanding any other law, a provision of the laws of this state may not be construed to waive or abrogate an immunity conferred by Section 171A.451 unless it expressly waives or abrogates immunity with specific reference to that section.

(b) Notwithstanding any other law, an attorney representing the state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state may not waive an immunity conferred by Section 171A.451 or take an action that would result in a waiver of that immunity. A purported waiver or action described by this subsection is considered void and an ultra vires act.

Sec. 171A.455. JURISDICTION. Notwithstanding any other law, a court of this state does not have jurisdiction to consider and may not award relief under any action, claim, or counterclaim that:

(1) seeks declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this subchapter invalid or unconstitutional; or

(2) would restrain a person, including this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, from:

(A) enforcing any provision or application of this chapter; or

(B) hearing, adjudicating, or docketing a civil action brought under Section 171A.101, 171A.151, or 171A.201.

Sec. 171A.456. EFFECT OF CONTRARY JUDICIAL ACTIONS. (a) Notwithstanding any other law, judicial relief issued by a court of this state that disregards the immunity conferred by Section 171A.451 or the jurisdictional limitation described by Section 171A.455:

(1) is considered void because a court without jurisdiction issued the relief; and

(2) may not be enforced or obeyed by an officer, employee, or agent, including a judicial official, of this state or a political subdivision of this state.

(b) Notwithstanding any other law, a writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain a person, including the state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, from hearing, adjudicating, docketing, or filing an action brought under Section 171A.101, 171A.151, or 171A.201:

(1) is considered void and a violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and

(2) may not be enforced or obeyed by an officer, employee, or agent, including a judicial official, of this state or a political subdivision of this state.

Sec. 171A.457. LIABILITY FOR VIOLATION. (a) Notwithstanding any other law, a person may bring an action against an officer, employee, or agent, including a judicial official, of this state or a political subdivision of this state, who issues, enforces, or obeys a writ, injunction, or declaratory judgment described by Subsection (b) if the writ, injunction, or judgment prevents or delays the person from bringing an action under Section 171A.101, 171A.151, or 171A.201.

(b) A claimant who prevails in an action brought under this section is entitled to:

- (1) injunctive relief;
- (2) compensatory damages;
- (3) exemplary damages of not less than \$100,000; and
- (4) costs and reasonable attorney's fees.

(c) Notwithstanding any other law, in an action brought under this section, a person who violates Section 171A.455 or 171A.456(b):

- (1) may not assert and is not entitled to any type of immunity defense, including sovereign immunity, governmental immunity, official immunity, or judicial immunity;
- (2) may not be indemnified for an award of damages or costs and attorney's fees entered against the person or for the costs of the person's legal defense; and
- (3) may not receive or obtain legal representation from the attorney general.

Sec. 171A.458. ACTION TO RECOVER COSTS. (a) Notwithstanding any other law, a claimant who brings an action seeking a writ, injunction, or declaratory judgment that would restrain a person from hearing, adjudicating, docketing, or filing an action under Section 171A.101, 171A.151, or 171A.201 is liable to the person for the person's costs and attorney's fees incurred in connection with the action.

(b) A person entitled to recover costs and attorney's fees under this section may bring an action in state or federal court.

(c) It is not a defense to an action brought under this section that:

- (1) the claimant 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 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 4. Section 71.02(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang, the person commits or conspires to commit one or more of the following:

- (1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, continuous sexual abuse of young child or disabled individual, solicitation of a minor, forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;
- (2) any gambling offense punishable as a Class A misdemeanor;
- (3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

- (4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;
- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;
- (5-a) causing the unlawful delivery, dispensation, or distribution of a controlled substance or dangerous drug in violation of Subtitle B, Title 3, Occupations Code;
- (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
- (7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;
- (8) any felony offense under Chapter 32;
- (9) any offense under Chapter 36;
- (10) any offense under Chapter 34, 35, or 35A;
- (11) any offense under Section 37.11(a);
- (12) any offense under Chapter 20A;
- (13) any offense under Section 37.10;
- (14) any offense under Section 38.06, 38.07, 38.09, or 38.11;
- (15) any offense under Section 42.10;
- (16) any offense under Section 46.06(a)(1) or 46.14;
- (17) any offense under Section 20.05 or 20.06;
- (18) any offense under Section 16.02; ~~[ex]~~
- (19) any offense classified as a felony under the Tax Code;
- (20) a violation of 18 U.S.C. Section 1462(c);
- (21) a violation of an abortion law under Chapter 170, 170A, 171, or 171A, Health and Safety Code, or Chapter 6-1/2, Title 71, Revised Statutes; and
- (22) an offense under Chapter 28 directed at a church, a crisis pregnancy center, an adoption agency, or an entity that offers alternatives to abortion services.

SECTION 5. (a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the 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 to every person, group of persons, or circumstances, are severable from each other.

(b) 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, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this Act shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the legislature's intent and priority that every single valid application of every statutory provision be allowed to stand alone.

(c) The legislature further declares that it would have enacted this Act, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions 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 invalid, preempted, or unconstitutional.

(d) 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, consistent with the severability requirements of Subsections (a), (b), and (c) of this section.

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), and (d) of this section 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 is not rewriting a statute or engaging in legislative or lawmaking activity, 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 of the disputed statute against the named parties to that lawsuit, which may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

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

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

(f) If any state or federal court disregards any of the severability requirements in Subsections (a), (b), (c), (d), or (e) of this section, and declares or finds any provision of this Act facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision that can be enforced against a person, a group of persons, or circumstances without violating federal law or the United States Constitution or Texas Constitution, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the United States Constitution or Texas Constitution, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION 6. Chapter 171A, Health and Safety Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SECTION 7. Section 71.02, 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 section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 8. This Act takes effect September 1, 2023.