

By: Toth

H.B. No. 1752

A BILL TO BE ENTITLED

AN ACT

relating to liability for the provision to certain children of procedures and treatments for gender transitioning, gender reassignment, or gender dysphoria; providing a civil penalty.

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

SECTION 1. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 74B to be read as follows:

CHAPTER 74B. LIABILITY FOR CAUSING THE STERILIZATION, CASTRATION, OR GENITAL MUTILATION OF A MINOR.

Sec. 74B.001. LIABILITY PROVISIONS. (a) Any person who:

(1) knowingly prescribes puberty blockers or hormone therapy to a minor for the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex;

(2) knowingly performs a sex-change operation on a minor; or

(3) knowingly aids or abets the conduct described in subsections (1)-(3), shall be strictly, absolutely, and jointly and severally liable in tort for any personal injuries resulting from the conduct described in this subsection.

(b) Notwithstanding any other law, a person injured by the conduct described in subsection (a) may bring a civil action

1 against those who knowingly engaged in the conduct or knowingly
2 aided or abetted the conduct that caused his injuries, and shall be
3 entitled to recover:

4 (1) nominal damages;

5 (2) compensatory damages;

6 (3) punitive damages in an amount of not less than
7 \$10,000,000 from each defendant if irreversible sterilization or
8 sexual dysfunction results, in addition to any compensatory damages
9 that may be awarded; and

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

11 (c) Notwithstanding any other law, a person may bring an
12 action under this section not later than the 20th anniversary of the
13 date the cause of action accrues.

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

16 (1) ignorance or mistake of law;

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

20 (3) a defendant's reliance on any court decision that
21 has been vacated, reversed, or overruled on appeal or by a
22 subsequent court, even if that court decision had not been vacated,
23 reversed, or overruled when the conduct described in subsection (a)
24 occurred;

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

1 (5) a defendant's reliance on any federal statute,
2 agency rule or action, or treaty that has been repealed,
3 superseded, or declared invalid or unconstitutional, even if that
4 federal statute, agency rule or action, or treaty had not been
5 repealed, superseded, or declared invalid or unconstitutional when
6 the conduct described in subsection (a) occurred;

7 (6) non-mutual issue preclusion or non-mutual claim
8 preclusion;

9 (7) the consent of the plaintiff to the defendant's
10 conduct;

11 (8) contributory or comparative negligence;

12 (9) assumption of risk;

13 (10) sovereign immunity, governmental immunity,
14 official immunity, or qualified immunity;

15 (11) the plaintiff's waiver or purported waiver of
16 their right to sue under this section;

17 (12) the plaintiff's failure to exhaust administrative
18 remedies; or

19 (13) any claim that the enforcement of this chapter or
20 the imposition of civil liability against the defendant will
21 violate the constitutional rights of third parties, except as
22 provided by Subsection (h).

23 (e) Notwithstanding any other law, including Chapter 17,
24 Civil Practice and Remedies Code, the courts of this state shall
25 have personal jurisdiction over any defendant sued under this
26 section to the maximum extent permitted by the Fourteenth Amendment
27 to the United States Constitution.

1 (f) Notwithstanding any other law, the law of Texas shall
2 apply to any gender-transitioning treatment provided to a resident
3 or citizen of Texas, regardless of where that treatment occurred,
4 and to any civil action brought under this Section, to the maximum
5 extent permitted by the Constitution of the United States and the
6 Constitution of Texas. Any contractual choice-of-law provision
7 that purports to require the law of a different jurisdiction to
8 apply shall be void as against public policy, and may not be
9 enforced in any state or federal court. This section shall apply
10 extraterritorially to the maximum extent permitted by the
11 Constitution of the United States and the Constitution of Texas.

12 (g) A civil action under this section may not be brought
13 against any person that acted at the behest of federal agencies,
14 contractors, or employees that are carrying out duties under
15 federal law, if the imposition of liability upon that person would
16 violate the doctrines of preemption or intergovernmental immunity.

17 (h) A defendant against whom an action is brought under this
18 section may assert an affirmative defense to liability under this
19 subsection if:

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

23 (2) the defendant

24 (A) has standing to assert the rights of a third
25 party under the tests for third-party standing established by the
26 Supreme Court of the United States; and

27 (B) demonstrates that the imposition of

1 liability on the defendant will violate constitutional or federally
2 protected rights belonging to that third party.

3 (i) Nothing in this section or chapter shall limit or
4 preclude a defendant from asserting the unconstitutionality of any
5 provision or application of Texas law as a defense to liability
6 under this section, or from asserting any other defense that might
7 be available under any other source of law.

8 (j) Notwithstanding any other law, the requirements of this
9 section shall be enforced exclusively through the private civil
10 actions described in Subsections (a) and (b). No direct or indirect
11 enforcement of this section may be taken or threatened by the state,
12 a political subdivision, a district or county attorney, or any
13 officer or employee of this state or a political subdivision
14 against any person or entity, by any means whatsoever, and no
15 violation of this section may be used to justify or trigger the
16 enforcement of any other law or any type of adverse consequence
17 under any other law, except through the private civil actions
18 described in Subsections (a) and (b). This section does not
19 preclude or limit the enforcement of any other law or regulation
20 against conduct that is independently prohibited by such other law
21 or regulation, and that would remain prohibited by such other law or
22 regulation in the absence of this section.

23 Sec. 74B.002 VENUE. (a) Notwithstanding any other law,
24 including Chapter 15, Civil Practice and Remedies Code, a civil
25 action brought under Section 1 may be brought in:

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

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

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

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

7 (b) If a civil action is brought under Section 1 in any one
8 of the venues described by Subsection (a), then the action may not
9 be transferred to a different venue without the written consent of
10 all parties.

11 (c) Any contractual choice-of-forum provision that purports
12 to require a civil action under Section 1 to be litigated in another
13 forum shall be void as against public policy, and may not be
14 enforced in any state or federal court.

15 Sec. 74B.003. IMMUNITY FROM SUIT AND LIMITS ON STATE-COURT
16 JURISDICTION. (a) Notwithstanding any other law, the state and
17 each of its officers and employees shall have sovereign immunity,
18 its political subdivisions and each of their officers and employees
19 shall have governmental immunity, and each officer and employee of
20 this state or a political subdivision shall have official immunity
21 (as well as sovereign or governmental immunity, as appropriate) in
22 any action, claim, counterclaim, or any type of legal or equitable
23 action that challenges the validity of any provision or application
24 of this chapter, on constitutional grounds or otherwise, or that
25 seeks to prevent or enjoin the state, its political subdivisions,
26 or any officer, employee, or agent of this state or a political
27 subdivision from enforcing any provision or application of this

1 chapter, or from hearing, adjudicating, or docketing a civil action
2 brought under Section 1, unless that immunity has been abrogated or
3 preempted by federal law in a manner consistent with the
4 Constitution of the United States. The sovereign immunity conferred
5 by this section upon the state and each of its officers and
6 employees includes the constitutional sovereign immunity
7 recognized by the Supreme Court of the United States in *Seminole*
8 *Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*,
9 527 U.S. 706 (1999), which applies in both state and federal court
10 and which may not be abrogated by Congress or by any state or
11 federal court except pursuant to legislation authorized by section
12 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article
13 I, or by Congress's powers to raise and support Armies and to
14 provide and maintain a Navy.

15 (b) Notwithstanding any other provision of law to the
16 contrary, the immunities conferred by Subsection (a) shall apply in
17 every court, both state and federal, and in every adjudicative
18 proceeding of any type whatsoever.

19 (c) Notwithstanding any other provision of law to the
20 contrary, no provision of state law may be construed to waive or
21 abrogate an immunity described in Subsection (a) unless it
22 expressly waives or abrogates immunity with specific reference to
23 this section.

24 (d) Notwithstanding any other provision of law to the
25 contrary, no attorney representing the state, its political
26 subdivisions, or any officer, employee, or agent of this state or a
27 political subdivision is authorized or permitted to waive an

1 immunity described in Subsection (a) or take any action that would
2 result in a waiver of that immunity, and any such action or
3 purported waiver shall be regarded as a legal nullity and an ultra
4 vires act.

5 (e) Notwithstanding any other law, including Chapter 37,
6 Civil Practice and Remedies Code, and sections 22.002, 22.221, and
7 24.007 through 24.011, Government Code, no court of this state may
8 award declaratory or injunctive relief, or any type of writ, that
9 would pronounce any provision or application of this subchapter
10 invalid or unconstitutional, or that would restrain the state, its
11 political subdivisions, any officer, employee, or agent of this
12 state or a political subdivision, or any person from enforcing any
13 provision or application of this chapter, or from hearing,
14 adjudicating, docketing, or filing a civil action brought under
15 Section 1, and no court of this state shall have jurisdiction to
16 consider any action, claim, or counterclaim that seeks such relief.

17 (f) Nothing in this section or chapter shall be construed to
18 prevent a litigant from asserting the invalidity or
19 unconstitutionality of any provision or application of this chapter
20 as a defense to any action, claim, or counterclaim brought against
21 that litigant.

22 (g) Notwithstanding any other law, any judicial relief
23 issued by a court of this state that disregards the immunities
24 conferred by Subsection (a), or the limitations on jurisdiction and
25 relief imposed by Subsection (e), shall be regarded as a legal
26 nullity because it was issued by a court without jurisdiction, and
27 may not be enforced or obeyed by any officer, employee, or agent of

1 this state or a political subdivision, judicial or otherwise.

2 (h) Notwithstanding any other law, any writ, injunction, or
3 declaratory judgment issued by a court of this state that purports
4 to restrain the state, its political subdivisions, any officer,
5 employee, or agent of this state or a political subdivision, or any
6 person from hearing, adjudicating, docketing, or filing a civil
7 action brought under Section 1 shall be regarded as a legal nullity
8 and a violation of the Due Process Clause of the Fourteenth
9 Amendment, and may not be enforced or obeyed by any officer,
10 employee, or agent of this state or a political subdivision,
11 judicial or otherwise.

12 (i) Notwithstanding any other law, any officer, employee,
13 or agent of this state or a political subdivision, judicial or
14 otherwise, who issues, enforces, or obeys a writ, injunction, or
15 declaratory judgment described in Subsection (h) shall be subject
16 to suit by any person who is prevented from or delayed in bringing a
17 civil action under Section 1, and a claimant who prevails in an
18 action brought under this section shall recover:

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

23 (j) Notwithstanding any other provision of law to the
24 contrary, any person who violates Subsections (e) or (h):

25 (1) may not assert and shall not be entitled to any
26 type of immunity defense, including sovereign immunity,
27 governmental immunity, official immunity, or judicial immunity;

1 (2) may not and shall not be indemnified for any award
2 of damages or costs and attorneys' fees entered against them, or for
3 the costs of their legal defense; and

4 (3) may not and shall not receive or obtain legal
5 representation from the attorney general of this state in any
6 action brought under Subsection (i).

7 (k) Notwithstanding any other law, any person who sues and
8 seeks any writ, injunction, or declaratory judgment that would
9 restrain any person from hearing, adjudicating, docketing, or
10 filing a civil action brought under Section 1 shall pay the costs
11 and attorneys' fees of the person sued. A person may bring a civil
12 action to recover these costs and attorneys' fees in state or
13 federal court. It shall not be defense to a civil action brought
14 under this Subsection that:

15 (1) the plaintiff failed to seek recovery of costs or
16 attorney's fees in the underlying action;

17 (2) the court in the underlying action declined to
18 recognize or enforce the requirements of this Section; or

19 (3) the court in the underlying action held that any
20 provisions of this Section are invalid, unconstitutional, or
21 preempted by federal law, notwithstanding the doctrines of issue or
22 claim preclusion.

23 SECTION 2. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2023.