

By: Leach

H.B. No. 7

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibitions on the manufacturing and provision of
3 abortion-inducing drugs, including the jurisdiction of and the
4 effect of certain judgments by certain courts within and outside
5 this state with respect to the manufacturing and provision of those
6 drugs, and to protections from certain counter actions under laws
7 other than the laws of this state; authorizing qui tam actions.

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

9 SECTION 1. This Act shall be known as the Woman and Child
10 Protection Act.

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

13 CHAPTER 171A. ABORTION-INDUCING DRUGS

14 SUBCHAPTER A. GENERAL PROVISIONS

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

16 (1) "Abortion" has the meaning assigned by Section
17 245.002.

18 (2) "Abortion-inducing drug" has the meaning assigned
19 by Section 171.061.

20 (3) "Delivery network company," "delivery person,"
21 "digital network," "digitally prearranged delivery," "digitally
22 prearranged ride," "driver," and "transportation network company"
23 have the meanings assigned by Section 2402.001, Occupations Code.

24 (4) "Health care facility" has the meaning assigned by

1 Section 108.002, except the term does not include a hospital.

2 (5) "Health care provider" means an individual who is
3 licensed, certified, or otherwise authorized by this state to
4 diagnose, prevent, alleviate, or cure a human illness or injury.
5 The term does not include a physician.

6 (6) "Hospital" means:

7 (A) a hospital licensed under Chapter 241 or 577;
8 or

9 (B) a hospital owned, maintained, or operated by
10 this state.

11 (7) "Medical emergency" means a condition described by
12 Section 170A.002(b)(2).

13 (8) "Physician" means an individual licensed to
14 practice medicine in this state, including a medical doctor and a
15 doctor of osteopathic medicine.

16 (9) "Physician group" means an entity, including an
17 entity described in the definition of physician under Section
18 74.001, Civil Practice and Remedies Code, that is formed by a
19 physician or group of physicians to provide medical services.

20 Sec. 171A.002. APPLICABILITY AND CONSTRUCTION OF CHAPTER
21 RELATED TO LIABILITY. This chapter does not apply to and a civil
22 action under this chapter may not be brought against:

23 (1) a hospital;

24 (2) a health care facility licensed, owned,
25 maintained, or operated by this state;

26 (3) a health care provider who practices exclusively
27 in this state;

1 (4) a physician who resides and practices medicine
2 exclusively in this state;

3 (5) a physician group located entirely in this state;

4 (6) an Internet service provider or the provider's
5 affiliates or subsidiaries;

6 (7) an Internet search engine; or

7 (8) a cloud service provider solely providing access
8 or connection to or from an Internet website or other information or
9 content on the Internet or on a facility, system, or network that is
10 not under the provider's control, including transmission,
11 downloading, intermediate storage, access software, or other
12 services; or

13 (9) a person who manufactures, distributes, mails,
14 transports, delivers, prescribes, provides, or possesses
15 abortion-inducing drugs solely for one or more of the following
16 purposes:

17 (A) treating a medical emergency;

18 (B) removing an ectopic pregnancy;

19 (C) removing a dead, unborn child whose death was
20 caused by spontaneous abortion; or

21 (D) a purpose that does not include performing,
22 inducing, attempting, or assisting an abortion.

23 SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

24 Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING
25 DRUGS. (a) Except as provided by Subsection (b) or Section
26 171A.002, a person may not:

27 (1) manufacture or distribute an abortion-inducing

1 drug in this state; or

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

5 (b) Subsection (a) does not prohibit:

6 (1) speech or conduct protected by the First Amendment
7 to the United States Constitution, as made applicable to the states
8 through the United States Supreme Court's interpretation of the
9 Fourteenth Amendment to the United States Constitution, or
10 protected by Section 8, Article I, Texas Constitution;

11 (2) conduct a pregnant woman takes in the course of
12 aborting or attempting to abort the woman's unborn child;

13 (3) the possession, distribution, mailing, transport,
14 delivery, or provision of an abortion-inducing drug for a purpose
15 described by Section 171A.002(9); or

16 (4) conduct a person takes under the direction of a
17 federal agency, contractor, or employee to carry out a duty under
18 federal law, if prohibiting that conduct would violate the doctrine
19 of preemption or intergovernmental immunity.

20 Sec. 171A.052. EXCLUSIVE ENFORCEMENT; EFFECT OF OTHER LAW.

21 (a) This subchapter may be enforced only through a qui tam action
22 brought under Subchapter C.

23 (b) No other direct or indirect enforcement of this
24 subchapter may be taken or threatened by this state, a political
25 subdivision of this state, a district or county attorney, or any
26 officer or employee of this state or a political subdivision of this
27 state against any person, by any means whatsoever, except as

1 provided in Subchapter C.

2 (c) This section does not preclude or limit the enforcement
3 of any other law or regulation against conduct that is
4 independently prohibited by the other law or regulation and that
5 would remain prohibited by the other law or regulation in the
6 absence of this subchapter.

7 SUBCHAPTER C. QUI TAM ENFORCEMENT OF PROHIBITIONS RELATING TO
8 ABORTION-INDUCING DRUGS

9 Sec. 171A.101. QUI TAM ACTION AUTHORIZED. (a) A person,
10 other than this state, a political subdivision of this state, or an
11 officer or employee of this state or a political subdivision of this
12 state, has standing to bring and may bring a qui tam action against
13 a person who:

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

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

16 (b) An action brought under this section must be brought in
17 the name of the qui tam relator, who is an assignee of this state's
18 claim for relief. Notwithstanding any other law, the transfer of
19 this state's claim to the qui tam relator is absolute, with the
20 state retaining no interest in the subject matter of the claim.

21 (c) A qui tam relator may not bring an action under this
22 section if the action is preempted by 47 U.S.C. Section 230(c).

23 (d) A qui tam action may not be brought under this section:

24 (1) against a woman for using, obtaining, or seeking
25 to obtain abortion-inducing drugs to abort or attempt to abort her
26 unborn child;

27 (2) against a person acting under the direction of a

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

4 (3) by any person who impregnated a woman through
5 conduct constituting sexual assault under Section 22.011, Penal
6 Code, aggravated sexual assault under Section 22.021, Penal Code,
7 or an offense for which an affirmative finding of family violence
8 was made under Article 42.013, Code of Criminal Procedure, or by
9 another person who acts in concert or participation with that
10 person;

11 (4) against a transportation network company or a
12 driver for using a transportation network company's digital network
13 to provide a digitally prearranged ride;

14 (5) against a delivery network company or a delivery
15 person for using a delivery network company's digital network to
16 provide a digitally prearranged delivery;

17 (6) a person described by Section 171A.002; or

18 (7) against a health care provider, pharmacy,
19 pharmaceutical manufacturer, pharmaceutical distributor,
20 physician, or common carrier unless the qui tam relator pleads and
21 proves the defendant:

22 (A) knowingly failed to take reasonable
23 precautions to ensure that the defendant would not manufacture,
24 distribute, mail, transport, deliver, prescribe, provide, possess,
25 or aid or abet the manufacture, distribution, mailing,
26 transportation, delivery, prescription, provision, or possession
27 of abortion-inducing drugs other than for a purpose described by

1 Section 171A.002(9); or

2 (B) failed to adopt and implement a policy to not
3 manufacture, distribute, mail, transport, deliver, prescribe,
4 provide, possess, or aid or abet the manufacture, distribution,
5 mailing, transportation, delivery, prescription, provision, or
6 possession of abortion-inducing drugs other than for a purpose
7 described by Section 171A.002(9).

8 (e) Notwithstanding any other law, including rules of civil
9 procedure adopted under Chapter 26, Civil Practice and Remedies
10 Code, an action brought under this section may not be litigated on
11 behalf of a claimant class or a defendant class, and a court may not
12 certify a class in the action.

13 (f) A qui tam relator may not disclose the name of a pregnant
14 woman who sought or obtained abortion-inducing drugs from the
15 defendant in any publicly available court filing.

16 Sec. 171A.102. VENUE. (a) Notwithstanding any other law,
17 including Chapter 15, Civil Practice and Remedies Code, a qui tam
18 action brought under Section 171A.101 may be brought in:

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

21 (2) the county of a defendant's residence at the time
22 the cause of action accrued if a defendant is an individual;

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

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

27 (b) If a qui tam action is brought under Section 171A.101 in

1 a venue described by Subsection (a), the action may not be
2 transferred to a different venue without the written consent of all
3 parties to the action.

4 (c) Any contractual choice-of-forum provision that requires
5 or purports to require a qui tam action under Section 171A.101 to be
6 litigated in a particular forum is void based on this state's public
7 policy and is not enforceable in any court.

8 Sec. 171A.103. DEFENSES. (a) It is an affirmative defense
9 to an action brought under Section 171A.101 that the defendant:

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

12 (2) took reasonable precautions to ensure the
13 defendant would not violate Section 171A.051.

14 (b) It is an affirmative defense to an action brought under
15 Section 171A.101 that:

16 (1) the imposition of civil liability on the defendant
17 will violate the defendant's rights under federal law, including
18 the United States Constitution;

19 (2) the defendant:

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

23 (B) demonstrates that the imposition of civil
24 liability on the defendant will violate the third party's rights
25 under federal law, including the United States Constitution;

26 (3) the imposition of civil liability on the defendant
27 will violate the defendant's rights under the Texas Constitution;

1 or

2 (4) the imposition of civil liability on the defendant
3 will violate limits on extraterritorial jurisdiction imposed by the
4 United States Constitution or the Texas Constitution.

5 (c) The defendant has the burden of proving an affirmative
6 defense under this section by a preponderance of the evidence.

7 (d) The following are not defenses to an action brought
8 under Section 171A.101:

9 (1) a defendant's ignorance or mistake of law,
10 including a defendant's mistaken belief that the requirements or
11 provisions of this chapter are unconstitutional or were
12 unconstitutional;

13 (2) a defendant's reliance on a court decision, other
14 than a decision of the United States Supreme Court, the Supreme
15 Court of Texas, or the Fifteenth Court of Appeals, that has been
16 vacated, reversed, or overruled on appeal or by a subsequent court,
17 even if the court decision had not been vacated, reversed, or
18 overruled when the cause of action accrued;

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

22 (4) a defendant's reliance on a federal agency rule or
23 action that has been repealed, superseded, or declared invalid or
24 unconstitutional, even if the federal agency rule or action had not
25 been repealed, superseded, or declared invalid or unconstitutional
26 when the cause of action accrued;

27 (5) the laws of another state or jurisdiction,

1 including an abortion shield law, unless the Texas Constitution or
2 federal law compels the court to enforce that law;

3 (6) non-mutual issue preclusion or non-mutual claim
4 preclusion;

5 (7) sovereign immunity, governmental immunity, or
6 official immunity, other than sovereign immunity, governmental
7 immunity, or official immunity applicable to:

8 (A) a hospital owned, maintained, or operated by
9 this state that facilitates the availability of or makes available
10 abortion-inducing drugs solely for purposes described by Section
11 171A.002(9);

12 (B) a political subdivision of this state,
13 including a hospital district, that facilitates the availability of
14 or makes available abortion-inducing drugs solely for purposes
15 described by Section 171A.002(9); or

16 (C) a physician or health care professional
17 employed by a hospital owned or operated by this state or a
18 political subdivision of this state, including a hospital district,
19 acting within the scope of the physician's or professional's
20 employment who prescribes, distributes, administers, or otherwise
21 makes available abortion-inducing drugs solely for purposes
22 described by Section 171A.002(9);

23 (8) a claim that the enforcement of this chapter or the
24 imposition of civil liability against the defendant will violate
25 the constitutional or federally protected rights of third parties,
26 except as provided by Subsection (b); or

27 (9) consent to the abortion by the claimant or the

1 unborn child's mother.

2 Sec. 171A.104. STATUTE OF LIMITATIONS. A person may bring
3 an action under Section 171A.101 not later than the fourth
4 anniversary of the date the cause of action accrues.

5 Sec. 171A.105. REMEDIES. (a) Notwithstanding any other
6 law and except as provided by Subsection (b), if a qui tam relator
7 prevails in an action brought under Section 171A.101, the court
8 shall award to the relator:

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

11 (2) statutory damages in an amount of not less than
12 \$100,000 for each violation of Section 171A.051; and

13 (3) costs and reasonable attorney's fees.

14 (b) A court may not award relief under Subsection (a)(2) or
15 (3) in response to a violation of Section 171A.051 if the defendant
16 demonstrates that:

17 (1) a court previously ordered the defendant to pay
18 damages under Subsection (a)(2) in another action for that
19 particular violation; and

20 (2) the court order described by Subdivision (1) has
21 not been vacated, reversed, or overturned.

22 (c) A court may not award costs or attorney's fees under the
23 Texas Rules of Civil Procedure or any other rule adopted by the
24 supreme court under Section 22.004, Government Code, to a defendant
25 against whom an action is brought under Section 171A.101.

26 (d) Subsection (c) does not preclude a court from:

27 (1) awarding sanctions under Chapter 10, Civil

1 Practice and Remedies Code; or

2 (2) sanctioning a litigant or attorney for frivolous,
3 malicious, or bad-faith conduct.

4 Sec. 171A.106. COORDINATED ENFORCEMENT PROHIBITED. (a)
5 This state, a political subdivision of this state, or an officer or
6 employee of this state or a political subdivision of this state may
7 not:

8 (1) act in concert or participation with a qui tam
9 relator bringing an action under Section 171A.101;

10 (2) establish or attempt to establish any type of
11 agency or fiduciary relationship with a qui tam relator bringing an
12 action under Section 171A.101;

13 (3) attempt to control or influence a person's
14 decision to bring an action under Section 171A.101 or that person's
15 conduct of the litigation; or

16 (4) intervene in an action brought under Section
17 171A.101.

18 (b) This section does not prohibit this state, a political
19 subdivision of this state, or an officer or employee of this state
20 or a political subdivision of this state from filing an amicus
21 curiae brief in an action brought under Section 171A.101 if this
22 state, the political subdivision, the officer, or the employee does
23 not act in concert or participation with the qui tam relator.

24 Sec. 171A.107. JURISDICTION; APPLICABILITY OF STATE LAW.

25 (a) Notwithstanding any other law, including Subchapter C, Chapter
26 17, Civil Practice and Remedies Code, the courts of this state have
27 personal jurisdiction over a defendant sued under Section 171A.101

1 to the maximum extent permitted by the Fourteenth Amendment to the
2 United States Constitution and the defendant may be served outside
3 this state.

4 (b) Notwithstanding any other law, the law of this state
5 applies to an action brought under Section 171A.101 to the maximum
6 extent permitted by the Texas Constitution and federal law,
7 including the United States Constitution.

8 (c) Notwithstanding any other law, any contractual
9 choice-of-law provision that requires or purports to require
10 application of the laws of a different jurisdiction is void based on
11 this state's public policy and is not enforceable in any court.

12 (d) Notwithstanding any other law, Chapters 27 and 110,
13 Civil Practice and Remedies Code, do not apply to an action brought
14 under Section 171A.101.

15 Sec. 171A.108. APPEALS. The Fifteenth Court of Appeals has
16 exclusive intermediate appellate jurisdiction over any appeal or
17 original proceeding arising out of an action brought under Section
18 171A.101 in the courts of this state.

19 Sec. 171A.109. APPLICATION OF OTHER LAW. Notwithstanding
20 any other law, a court may not apply the law of another state or
21 jurisdiction to any qui tam action brought under Section 171A.101
22 unless the Texas Constitution or federal law compels the court to
23 apply that law.

24 Sec. 171A.110. STANDING TO SEEK CERTAIN RELIEF.
25 Notwithstanding Chapter 37, Civil Practice and Remedies Code, a
26 person does not have standing to seek declaratory or injunctive
27 relief in the courts of this state to restrain a qui tam relator

1 from bringing an action under Section 171A.101.

2 SUBCHAPTER D. PROTECTION FROM CERTAIN COUNTER ACTIONS

3 Sec. 171A.151. EFFECT OF CLAWBACK PROVISIONS. (a) For
4 purposes of this section, the term "clawback provision" refers to
5 any law of another state or jurisdiction that authorizes the
6 bringing of a civil action against a person for:

7 (1) bringing or engaging in:

8 (A) an action authorized by this chapter,
9 including Subsection (f); or

10 (B) a criminal prosecution of an offense under
11 Section 171.065 that is based on a violation of Section
12 171.063(b-1);

13 (2) attempting, intending, or threatening to bring or
14 engage in an action or criminal prosecution described by
15 Subdivision (1); or

16 (3) providing legal representation or any type of
17 assistance to a person who brings or engages in an action or
18 criminal prosecution described by Subdivision (1).

19 (b) Notwithstanding any other law and except as otherwise
20 provided by federal law or the Texas Constitution, the laws of this
21 state apply to:

22 (1) conduct described by Subsection (a);

23 (2) an action brought against a person for engaging in
24 conduct described by Subsection (a);

25 (3) an action brought under a clawback provision
26 against a resident of this state; and

27 (4) an action brought under Subsection (f).

1 (c) Notwithstanding any other law, in an action or criminal
2 prosecution described by Subsection (a)(1), the court shall, on
3 request, issue a temporary, preliminary, or permanent injunction
4 that restrains each defendant in the action or prosecution, each
5 person in privity with the defendant, and each person with whom the
6 defendant is in active concert or participation from:

7 (1) bringing an action under any clawback provision
8 against a claimant or prosecutor, a person in privity with the
9 claimant or prosecutor, or a person providing legal representation
10 or any type of assistance to the claimant or prosecutor; and

11 (2) continuing to litigate an action under any
12 clawback provision that has been brought against a claimant or
13 prosecutor, a person in privity with the claimant or prosecutor, or
14 a person providing legal representation or any type of assistance
15 to the claimant or prosecutor.

16 (d) Notwithstanding any other law, the doctrines of res
17 judicata and collateral estoppel preclude a defendant against whom
18 a judgment is entered in an action or criminal prosecution
19 described by Subsection (a)(1) and each person in privity with the
20 defendant from litigating or relitigating any claim or issue under
21 any clawback provision against a claimant, prosecutor, or person in
22 privity with the claimant or prosecutor that was raised or could
23 have been raised as a claim, cross claim, counterclaim, or
24 affirmative defense under the federal or this state's rules of
25 civil or criminal procedure.

26 (e) Notwithstanding any other law, a court of this state may
27 not enforce an out-of-state judgment obtained in an action brought

1 under a clawback provision unless federal law or the Texas
2 Constitution requires the court to enforce the judgment.

3 (f) Notwithstanding any other law, if an action is brought
4 or judgment is entered against a person under a clawback provision
5 based wholly or partly on the person's decision to engage in conduct
6 described by Subsection (a), that person is entitled to injunctive
7 relief and damages from any person who brought the action or
8 obtained the judgment or who sought to enforce the judgment.
9 Notwithstanding any other law, the relief described by this
10 subsection must include:

11 (1) compensatory damages, including money damages in
12 an amount equal to the judgment damages and costs, expenses, and
13 reasonable attorney's fees spent in defending the action;

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

16 (3) additional statutory damages, costs, expenses,
17 and reasonable attorney's fees consisting of the greater of:

18 (A) twice the sum of the damages, costs,
19 expenses, and fees described by Subdivisions (1) and (2); or

20 (B) \$100,000; and

21 (4) injunctive relief that restrains each person who
22 brought the action under the clawback provision, each person in
23 privity with the person, and each person acting in concert or
24 participation with the person from:

25 (A) bringing further actions under any clawback
26 provision against the person against whom the action was brought,
27 each person in privity with the person, or any person providing

1 legal representation or any type of assistance to the person;

2 (B) continuing to litigate any actions brought
3 under a clawback provision against the persons described by
4 Paragraph (A); and

5 (C) enforcing or attempting to enforce any
6 judgment obtained in any actions brought under a clawback provision
7 against the persons described by Paragraph (A).

8 (g) It is not a defense to an action brought under
9 Subsection (f) that:

10 (1) the claimant failed to seek recovery under
11 Subsection (f) in an action brought against the claimant under a
12 clawback provision; or

13 (2) a court in a preceding action brought against the
14 claimant declined to recognize or enforce Subsection (f) or held
15 any provision of that subsection invalid, unconstitutional, or
16 preempted by federal law, notwithstanding the doctrines of issue or
17 claim preclusion.

18 (h) Notwithstanding any other law, Chapter 27, Civil
19 Practice and Remedies Code, does not apply to an action brought
20 under Subsection (f).

21 (i) The Fifteenth Court of Appeals has exclusive
22 intermediate appellate jurisdiction over any appeal or original
23 proceeding arising out of a civil action brought under Subsection
24 (f) in the courts of this state.

25 SECTION 3. Chapter 171A, Health and Safety Code, as added by
26 this Act, applies only to a cause of action that accrues on or after
27 the effective date of this Act.

1 SECTION 4. It is the intent of the legislature that every
2 provision, section, subsection, sentence, clause, phrase, or word
3 in this Act, and every application of the provisions in this Act to
4 every person, group of persons, or circumstances, is severable from
5 each other. If any application of any provision in this Act to any
6 person, group of persons, or circumstances is found by a court to be
7 invalid for any reason, the remaining applications of that
8 provision to all other persons and circumstances shall be severed
9 and may not be affected.

10 SECTION 5. This Act takes effect on the 91st day after the
11 last day of the legislative session.