

By: Toth

H.B. No. 2258

A BILL TO BE ENTITLED

AN ACT

imposing private civil liability on anyone who causes or contributes to the social transitioning of a minor.

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

SECTION 1. This Act shall be known as the Vulnerable Youth Protection Act.

SECTION 2. Chapter 161, Health and Safety Code, is amended by adding Subchapter Y to read as follows:

SUBCHAPTER Y. VULNERABLE YOUTH PROTECTION ACT

Sec. 161.711. DEFINITIONS. In this subchapter:

(1) "Castration, sterilization, or mutilation of a minor" means any of the procedures or treatments prohibited in Subchapter X, Chapter 161, Health and Safety Code, regardless of who performs or provides those procedures or treatments. It does not include any of the conduct described in Section 161.703, Health and Safety Code.

(2) "Social transitioning" means any act by which a minor child adopts or espouses a gender identity that differs from the child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child. This can include but is not limited to changes in clothing, pronouns, hairstyle, and name.

Sec. 161.712. CAUSING OR CONTRIBUTING TO THE TRANSITIONING OF A MINOR. (a) Any person who causes or contributes to:

1 (1) The social transitioning of a minor; or

2 (2) The castration, sterilization, or mutilation of a
3 minor,

4 shall be strictly, absolutely, and jointly and severally
5 liable to the child and the child's parents for any personal
6 injuries or harm resulting from the conduct described in this
7 subsection, PROVIDED, that no person may be held liable under this
8 section for speech or conduct protected by the First Amendment of
9 the United States Constitution, as made applicable to the states
10 through the Supreme Court of the United States' interpretations of
11 the Fourteenth Amendment of the United States Constitution, or by
12 Article 1, § 8 of the Texas State Constitution.

13 (b) A person who prevails in a suit brought under this
14 section shall be entitled to recover:

15 (1) nominal damages;

16 (2) compensatory damages;

17 (3) statutory damages in an amount of not less than
18 \$10,000.00 from each defendant, in addition to any compensatory
19 damages that may be awarded; and

20 (4) punitive damages in an amount of not less than
21 \$10,000,000.00 from each defendant if irreversible sterilization
22 or sexual dysfunction results, in addition to any compensatory
23 damages that may be awarded; and

24 (5) costs and reasonable attorney's fees.

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

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

3 (1) ignorance or mistake of law;

4 (2) a defendant's belief that the requirements or
5 provisions of this subchapter are unconstitutional or were
6 unconstitutional;

7 (3) a defendant's reliance on any court decision that
8 has been vacated, reversed, or overruled on appeal or by a
9 subsequent court, even if that court decision had not been vacated,
10 reversed, or overruled when the conduct described in subsection
11 (a) occurred;

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

15 (5) a defendant's reliance on any federal statute,
16 agency rule or action, or treaty that has been repealed,
17 superseded, or declared invalid or unconstitutional, even if that
18 federal statute, agency rule or action, or treaty had not been
19 repealed, superseded, or declared invalid or unconstitutional when
20 the conduct described in subsection (a) occurred;

21 (6) non-mutual issue preclusion or non-mutual claim
22 preclusion;

23 (7) the consent of the plaintiff to the defendant's
24 conduct;

25 (8) contributory or comparative negligence;

26 (9) assumption of risk;

27 (10) lack of but-for or proximate causation;

1 (11) sovereign immunity, governmental immunity,
2 official immunity, or qualified immunity;

3 (12) the plaintiff's waiver or purported waiver of
4 their right to sue under this section;

5 (13) the plaintiff's failure to exhaust administrative
6 remedies; or

7 (14) any claim that the enforcement of this subchapter
8 or the imposition of civil liability against the defendant will
9 violate the constitutional rights of third parties, except as
10 provided by Subsection (h).

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

16 (f) Notwithstanding any other law, the law of Texas shall
17 apply to any gender-transitioning treatment provided to a resident
18 or citizen of Texas, regardless of where that treatment occurred,
19 and to any civil action brought under this Section, to the maximum
20 extent permitted by the Constitution of the United States and the
21 Constitution of Texas. Any contractual choice-of-law provision
22 that purports to require the law of a different jurisdiction to
23 apply shall be void as against public policy, and may not be
24 enforced in any state or federal court. This section shall apply
25 extraterritorially to the maximum extent permitted by the
26 Constitution of the United States and the Constitution of Texas.

27 (g) A civil action under this section may not be brought

1 against any person that acted at the behest of federal agencies,
2 contractors, or employees that are carrying out duties under
3 federal law, if the imposition of liability upon that person would
4 violate the doctrines of preemption or intergovernmental immunity.

5 (h) A defendant against whom an action is brought under this
6 section may assert an affirmative defense to liability under this
7 subsection if:

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

11 (2) the defendant

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

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

18 (i) Nothing in this section or subchapter shall limit or
19 preclude a defendant from asserting the unconstitutionality of any
20 provision or application of Texas law as a defense to liability
21 under this section, or from asserting any other defense that might
22 be available under any other source of law.

23 (j) Notwithstanding any other law, this section shall be
24 enforced exclusively through the private civil actions described in
25 Subsections (a) and (b). No direct or indirect enforcement of this
26 section may be taken or threatened by the state, a political
27 subdivision, a district or county attorney, or any officer or

employee of this state or a political subdivision against any person or entity, by any means whatsoever, and the conduct described in Subsection (a) may not be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except through the private civil actions described in Subsections (a) and (b). This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

(k) Notwithstanding any other law, neither the state, nor any of its political subdivisions, nor any district or county attorney, nor any officer or employee of this state or a political subdivision may:

(1) act in concert or participation with anyone who brings suit under this section;

(2) establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

(3) make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or

(4) intervene in any action brought under this section.

This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert

or participation with the plaintiff or plaintiffs who sue under this section or violate any provision of Subsection (k)(1)-(4).

(l) Notwithstanding any other law, a civil action under this section shall not be subject to any provision of Chapter 27, Civil Practice and Remedies Code, or Chapter 110, Civil Practice and Remedies Code.

(m) Notwithstanding any other law, including Rule 42 of the Texas Rules of Civil Procedure, a civil action under this section may not be litigated on behalf of a plaintiff class or a defendant class, and no court may certify a class under Rule 42 of the Texas Rules of Civil Procedure in any civil action brought under this section.

(n) Any waiver or purported waiver of the right to sue under this section shall be void as against public policy, and shall not be enforceable in any court.

Sec. 161.713. IMMUNITY FROM SUIT AND LIMITS ON STATE-COURT JURISDICTION. (a) Notwithstanding any other law, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity or enforceability of any provision or application of this subchapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state,

1 its political subdivisions, or any officer, employee, or agent of
2 this state or a political subdivision from enforcing any provision
3 or application of this subchapter, or from hearing, adjudicating,
4 or docketing a civil action brought under Section 161.712, unless
5 that immunity has been abrogated or preempted by federal law in a
6 manner consistent with the Constitution of the United States. The
7 sovereign immunity conferred by this section upon the state and
8 each of its officers and employees includes the constitutional
9 sovereign immunity recognized by the Supreme Court of the United
10 States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996),
11 and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both
12 state and federal court and which may not be abrogated by Congress
13 or by any state or federal court except pursuant to congressional
14 legislation authorized by section 5 of the Fourteenth Amendment, by
15 the Bankruptcy Clause of Article I, or by Congress's powers to raise
16 and support Armies and to provide and maintain a Navy, or by any
17 other ground that might be recognized by the Supreme Court of the
18 United States.

19 (b) Notwithstanding any other law, the immunities conferred
20 by Subsection (a) shall apply in every court, both state and
21 federal, and in every adjudicative proceeding of any type
22 whatsoever.

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

27 (d) Notwithstanding any other law, no attorney representing

the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (a) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(e) Notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, and sections 22.002, 22.221, and 24.007 through 24.011, Government Code, no court of this state may award declaratory or injunctive relief, or any type of stay or writ, including a writ of prohibition, that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would restrain or prevent the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from enforcing any provision or application of this subchapter, or from hearing, adjudicating, docketing, or filing a civil action brought under Section 161.712, and no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief, and no such action, claim, or counterclaim may be litigated on behalf of a plaintiff or defendant class, notwithstanding Rule 42 of the Texas Rules of Civil Procedure, and no court may certify a plaintiff or defendant class in any action seeking the relief described in this Subsection.

(f) Nothing in this section or subchapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this

1 subchapter as a defense to any action, claim, or counterclaim
2 brought against that litigant.

3 Sec. 161.714. SEVERABILITY. (a) Mindful of *Leavitt v.*
4 *Jane L.*, 518 U.S. 137 (1996), in which in the context of determining
5 the severability of a state statute the Supreme Court of the United
6 States held that an explicit statement of legislative intent is
7 controlling, it is the intent of the legislature that every
8 provision, section, subsection, sentence, clause, phrase, or word
9 in this subchapter, and every application of the provisions in this
10 subchapter to every person, group of persons, or circumstances,
11 are severable from each other.

12 (b) If any application of any provision in this subchapter
13 to any person, group of persons, or circumstances is found by a
14 court to be invalid, preempted, or unconstitutional, for any reason
15 whatsoever, then the remaining applications of that provision to
16 all other persons and circumstances shall be severed and preserved,
17 and shall remain in effect. All constitutionally valid applications
18 of the provisions in this subchapter shall be severed from any
19 applications that a court finds to be invalid, preempted, or
20 unconstitutional, because it is the legislature's intent and
21 priority that every single valid application of every statutory
22 provision be allowed to stand alone.

23 (c) The legislature further declares that it would have
24 enacted this subchapter, and each provision, section, subsection,
25 sentence, clause, phrase, or word, and all constitutional
26 applications of the provisions of this subchapter, irrespective of
27 the fact that any provision, section, subsection, sentence, clause,

1 phrase, or word, or applications of this subchapter were to be
2 declared invalid, preempted, or unconstitutional.

3 (d) If any provision of this subchapter is found by any
4 court to be unconstitutionally vague, then the applications of that
5 provision that do not present constitutional vagueness problems
6 shall be severed and remain in force, consistent with the
7 severability requirements of Subsections (a), (b), and (c).

8 (e) No court may decline to enforce the severability
9 requirements of Subsections (a), (b), (c), and (d) on the ground
10 that severance would "rewrite" the statute or involve the court in
11 legislative or lawmaking activity. A court that declines to
12 enforce or enjoins a state official from enforcing a statutory
13 provision is never rewriting a statute or engaging in legislative
14 or lawmaking activity, as the statute continues to contain the same
15 words as before the court's decision. A judicial injunction or
16 declaration of unconstitutionality:

17 (1) is nothing more than an edict prohibiting
18 enforcement of the disputed statute against the named parties to
19 that lawsuit, which may subsequently be vacated by a later court if
20 that court has a different understanding of the requirements of the
21 Texas Constitution or United States Constitution;

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

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

27 (f) If any state or federal court disregards any of the

1 severability requirements in Subsections (a), (b), (c), (d), or
 2 (e), and declares or finds any provision of this subchapter
 3 facially invalid, preempted, or unconstitutional, when there are
 4 discrete applications of that provision can be enforced against a
 5 person, group of persons, or circumstances without violating
 6 federal law or the federal or state constitutions, then that
 7 provision shall be interpreted, as a matter of state law, as if the
 8 legislature had enacted a provision limited to the persons, group
 9 of persons, or circumstances for which the provision's application
 10 will not violate federal law or the federal or state constitutions,
 11 and every court and every state official shall adopt this saving
 12 construction of that provision until the court ruling that
 13 pronounced the provision facially invalid, preempted, or
 14 unconstitutional is vacated or overruled.

15 SECTION 3. This Act takes effect immediately if it receives
 16 a vote of two-thirds of all the members elected to each house, as
 17 provided by Section 39, Article III, Texas Constitution. If this
 18 Act does not receive the vote necessary for immediate effect, this
 19 Act takes effect September 1, 2025.