86R1909 YDB-F

By:  Campbell S.B. No. 389

A BILL TO BE ENTITLED

AN ACT

relating to the prohibition of certain transactions between a governmental entity and an abortion provider or affiliate of the provider.

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

SECTION 1.  Subtitle F, Title 10, Government Code, is amended by adding Chapter 2272 to read as follows:

CHAPTER 2272. PROHIBITED TRANSACTIONS

Sec. 2272.001.  DEFINITIONS. In this chapter:

(1)  "Abortion" means an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

(2)  "Abortion provider" means:

(A)  a facility licensed under Chapter 245, Health and Safety Code; or

(B)  an ambulatory surgical center licensed under Chapter 243, Health and Safety Code, that is used substantially for the purpose of performing abortions.

(3)  "Affiliate" means an entity or individual that has, with another entity or individual, a legal relationship created or governed by at least one written document.

(4)  "Governmental entity" means this state, a state agency in the executive, judicial, or legislative branch of state government, or a political subdivision of this state.

(5)  "Taxpayer resource transaction" means a sale, purchase, lease, or donation of money, goods, services, or real property, or any other transaction between a governmental entity and a private entity or individual that provides to the private entity or individual something of value derived directly or indirectly from state or local tax revenue, regardless of whether the governmental entity receives something of value in return. The term does not include the provision of basic governmental services, including fire and police protection.

Sec. 2272.002.  APPLICABILITY. For purposes of this chapter, a facility is not considered an abortion provider solely because an abortion is performed at the facility to prevent a patient's death or serious impairment in accordance with Section 245.016, Health and Safety Code.

Sec. 2272.003.  ABORTION PROVIDER AND AFFILIATE TRANSACTIONS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (c), a governmental entity may not enter into a taxpayer resource transaction or contract with an abortion provider or an affiliate of an abortion provider.

(b)  An entity or individual is not considered an affiliate of another entity or individual for purposes of this section unless the entity or individual, by way of at least one written document, including a certificate of formation, a franchise agreement, standards of affiliation, bylaws, or a license, demonstrates:

(1)  common ownership, management, or control between the parties to the relationship;

(2)  the existence of a franchise granted by the other entity or individual to the affiliate; or

(3)  the granting or extension of a license or other agreement authorizing the affiliate to use the other entity's or individual's brand name, trademark, service mark, or other registered identification mark.

(c)  This section does not apply to a taxpayer resource transaction that is subject to a federal law in conflict with Subsection (a) as determined by the executive commissioner of the Health and Human Services Commission and confirmed in writing by the attorney general.

Sec. 2272.004.  INJUNCTION; WAIVER OF IMMUNITY. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 2272.003. The attorney general may recover reasonable attorney's fees and costs incurred in bringing an action under this subsection.

(b)  Sovereign or governmental immunity, as applicable, of a governmental entity to suit and from liability is waived to the extent of liability created by Subsection (a).

SECTION 2.  Chapter 2272, Government Code, as added by this Act, applies only to a taxpayer resource transaction or contract entered into on or after the effective date of this Act.

SECTION 3.  This Act takes effect July 1, 2019, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this Act takes effect September 1, 2019.