

By: Capriglione

H.B. No. 2350

A BILL TO BE ENTITLED

AN ACT

relating to prohibition of abortion; creating a civil penalty offense; providing for a civil cause of action.

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

SECTION 1. Title 10, Penal Code, is amended by adding Chapter 50 to read as follows:

CHAPTER 50. ABORTION

Sec. 50.01. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code.

(2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum.

(3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body through the entire embryonic and fetal stages of the unborn child's development from fertilization until birth.

(4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities for the medical conditions involved.

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

1 Sec. 50.02. PERFORMANCE OF ABORTION; CIVIL OFFENSE. (a) A
2 person may not knowingly perform or induce or attempt to perform or
3 induce an abortion intended to cause the death of an unborn child.

4 (b) A person commits a civil offense if an unborn child dies
5 or sustains bodily injury as a result of an abortion performed or
6 attempted by the person.

7 (c) It is an exception to the application of this section
8 that:

9 (1) the actor is a licensed physician;

10 (2) in the actor's reasonable medical judgment, the
11 pregnant female on whom the abortion is performed or attempted has a
12 life-threatening physical condition aggravated by, caused by, or
13 arising from a pregnancy that places the female at risk of death or
14 poses a serious risk of substantial impairment of a major bodily
15 function unless the abortion is performed; and

16 (3) the actor performs or attempts to perform the
17 abortion in a manner that, in the actor's reasonable medical
18 judgment, provides the best opportunity for the unborn child to
19 survive unless, in the actor's reasonable medical judgment, that
20 manner would create:

21 (A) a greater risk of the pregnant female's
22 death; or

23 (B) a serious risk of substantial impairment of a
24 major bodily function of the pregnant female.

25 (d) The exception provided by Subsection (c) is not
26 available if, at the time the abortion was performed or attempted,
27 the actor knew the risk of death or a substantial impairment of a

1 major bodily function arose from a claim or diagnosis that the
2 female would engage in conduct that might result in the female's
3 death or in substantial impairment of a major bodily function.

4 (e) It is an exception to the application of this section
5 that the conduct subject to the offense is medical treatment
6 provided to a pregnant female by a physician and that medical
7 treatment results in the accidental death of or unintentional
8 bodily injury to an unborn child.

9 (f) This section may not be construed to authorize the
10 prosecution of a pregnant female on whom an abortion is performed or
11 attempted.

12 Sec. 50.03. CIVIL PENALTY. A physician or health care
13 facility that violates this section is subject to a civil penalty of
14 \$500 for each violation. The attorney general, at the request of the
15 commission or appropriate licensing agency, may file an action to
16 recover a civil penalty assessed under this section and may recover
17 attorney's fees and costs incurred in bringing the action. Each day
18 of a continuing violation constitutes a separate ground for
19 recovery.

20 Sec. 50.04. CIVIL REMEDIES UNAFFECTED. The fact that
21 conduct is a civil offense under this section does not abolish or
22 impair any remedy for the conduct that is available in a civil suit.

23 Sec. 50.05. CIVIL ACTION; PROVIDING REMEDIES. (a) Unless
24 the abortion is performed pursuant to the exception provided in
25 Section 50.02(c), a woman on whom an abortion, as defined by Section
26 245.002, Health and Safety Code, is performed or attempted, the
27 father of the unborn child or a parent of the mother of the unborn

1 child, if the mother is younger than 18 years of age at the time of
2 the abortion, may bring a civil action to obtain appropriate relief
3 for causing the unborn child to die or sustain bodily injury as a
4 result of the abortion, including:

5 (1) money damages for physical injury, mental anguish,
6 and emotional distress; and

7 (2) exemplary damages equal to three times the cost of
8 the abortion.

9 (b) A person may not bring or maintain an action under this
10 section if:

11 (1) the person consented to the abortion; or

12 (2) the person's injurious conduct resulted in the
13 pregnancy.

14 SECTION 2. Chapter 6-1/2, Title 71, Revised Statutes, is
15 repealed.

16 SECTION 3. (a) Sections 1 and 2 of this Act take effect, to
17 the extent permitted, on the 30th day after:

18 (1) the issuance of a United States Supreme Court
19 judgment overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113
20 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833
21 (1992), thereby allowing the states to prohibit abortion;

22 (2) the issuance of any other United States Supreme
23 Court decision that recognizes, wholly or partly, the authority of
24 the states to prohibit abortion; or

25 (3) adoption of an amendment to the United States
26 Constitution that, wholly or partly, restores to the states the
27 authority to prohibit abortion.

1 (b) Chapter 50, Penal Code, as added by this Act, applies
2 only to an offense committed on or after the date described by
3 Subsection (a) of this section. An offense committed before the
4 date described by Subsection (a) of this section is governed by the
5 law in effect on the date the offense was committed, and the former
6 law is continued in effect for that purpose. For purposes of this
7 subsection, an offense is committed before the date described by
8 Subsection (a) of this section if any element of the offense occurs
9 before that date.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2019.