

By: Slaton

H.B. No. 101

A BILL TO BE ENTITLED

AN ACT

1
2 relating to prohibiting abortion and protecting the rights of an
3 unborn child and to criminal liability for, justification for, and
4 defenses to prohibited conduct.

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

6 SECTION 1. This Act may be cited as the Abolition of
7 Abortion through Equal Protection for All Unborn Children Act.

8 SECTION 2. Acting on Section 1, Article I, Texas
9 Constitution, which provides that "Texas is a free and independent
10 State, subject only to the Constitution of the United States," and
11 acknowledging the sanctity of innocent human life created in the
12 image of God, which should be equally protected from fertilization
13 to natural death, the purpose of this Act is:

14 (1) to ensure the right to life and equal protection of
15 the laws to all unborn children from the moment of fertilization;

16 (2) to establish that a living human unborn child,
17 from the moment of fertilization and at every stage of development,
18 is entitled to the same rights, powers, and privileges as are
19 secured or granted by the laws of this state to any other human
20 person;

21 (3) to rescind all licenses to kill unborn children by
22 repealing discriminatory provisions;

23 (4) to equally apply the law to all persons, including
24 legal defenses, immunities, and justifications, such as duress,

1 necessity, and mistake of fact;

2 (5) to recognize that the United States Constitution
3 and the laws of the United States enacted in pursuance of that
4 constitution are the supreme law of the land;

5 (6) as legislators, to fulfill our oaths of office to
6 the United States Constitution, so help us God, by disavowing the
7 legal fiction that the constitution prohibits this state from
8 exercising its reserved police powers to prohibit and criminalize
9 homicide and from exercising its constitutional and God-given
10 duties to provide equal protection to all persons within its
11 jurisdiction;

12 (7) to follow Justice Thomas's statement in *June*
13 *Medical Services, L.L.C. v. Russo*, 140 S. Ct. 2103 (2020) that
14 "[t]he constitution does not constrain the States' ability to
15 regulate or even prohibit abortion"; and

16 (8) to therefore treat as void and of no effect any and
17 all federal statutes, regulations, treaties, orders, and court
18 rulings that would deprive an unborn child of the right to life or
19 prohibit the equal protection of that right.

20 SECTION 3. The heading to Section 151.002, Family Code, is
21 amended to read as follows:

22 Sec. 151.002. RIGHTS OF A LIVING CHILD [~~AFTER AN ABORTION OR~~
23 ~~PREMATURE BIRTH, CIVIL PENALTY, CRIMINAL OFFENSE~~].

24 SECTION 4. Section 151.002(a), Family Code, is amended to
25 read as follows:

26 (a) A living human child, from the moment of fertilization
27 on fusion of a human spermatozoon with a human ovum, [~~born alive~~

1 ~~after an abortion or premature birth]~~ is entitled to the same
2 rights, powers, and privileges as are secured or granted by the laws
3 of this state to any other human child [~~born alive after the normal~~
4 ~~gestation period~~].

5 SECTION 5. Subchapter B, Chapter 402, Government Code, is
6 amended by adding Section 402.0375 to read as follows:

7 Sec. 402.0375. ABORTION PROHIBITION ENFORCEMENT. The
8 attorney general shall monitor this state's enforcement of Chapters
9 19 and 22, Penal Code, in relation to abortion. The attorney general
10 shall direct a state agency to enforce those laws, regardless of any
11 contrary federal statute, regulation, treaty, order, or court
12 decision.

13 SECTION 6. The heading to Chapter 370, Local Government
14 Code, is amended to read as follows:

15 CHAPTER 370. MISCELLANEOUS PROVISIONS RELATING TO [~~MUNICIPAL AND~~
16 ~~COUNTY~~] HEALTH AND PUBLIC SAFETY FOR MORE THAN ONE TYPE OF LOCAL
17 GOVERNMENT

18 SECTION 7. Chapter 370, Local Government Code, is amended
19 by adding Section 370.007 to read as follows:

20 Sec. 370.007. ABORTION PROHIBITION ENFORCEMENT. The
21 governing body of a political subdivision of this state shall
22 ensure that the political subdivision enforces Chapters 19 and 22,
23 Penal Code, in relation to abortion, regardless of any contrary
24 federal statute, regulation, treaty, order, or court decision.

25 SECTION 8. Section 7.02(a), Penal Code, is amended to read
26 as follows:

27 (a) A person is criminally responsible for an offense

1 committed by the conduct of another if:

2 (1) acting with the kind of culpability required for
3 the offense, the actor [~~he~~] causes or aids an innocent or
4 nonresponsible person to engage in conduct prohibited by the
5 definition of the offense;

6 (2) acting with intent to promote or assist the
7 commission of the offense, the actor [~~he~~] solicits, encourages,
8 directs, aids, or attempts to aid the other person to commit the
9 offense; or

10 (3) having a legal duty to prevent commission of the
11 offense and acting with intent to promote or assist its commission,
12 the actor [~~he~~] fails to make a reasonable effort to prevent
13 commission of the offense.

14 SECTION 9. Section 8.02, Penal Code, is amended to read as
15 follows:

16 Sec. 8.02. MISTAKE OF FACT. (a) It is a defense to
17 prosecution that the actor through mistake formed a reasonable
18 belief about a matter of fact if the actor's [~~his~~] mistaken belief
19 negated the kind of culpability required for commission of the
20 offense.

21 (b) Although an actor's mistake of fact may constitute a
22 defense to the offense charged, the actor [~~he~~] may nevertheless be
23 convicted of any lesser included offense of which the actor [~~he~~]
24 would be guilty if the fact were as the actor [~~he~~] believed.

25 SECTION 10. Sections 8.05(a), (b), (d), and (e), Penal
26 Code, are amended to read as follows:

27 (a) It is an affirmative defense to prosecution that the

1 actor engaged in the proscribed conduct because the actor [~~he~~] was
2 compelled to do so by threat of imminent death or serious bodily
3 injury to the actor [~~himself~~] or another person.

4 (b) In a prosecution for an offense that does not constitute
5 a felony, it is an affirmative defense to prosecution that the actor
6 engaged in the proscribed conduct because the actor [~~he~~] was
7 compelled to do so by force or threat of force.

8 (d) The defense provided by this section is unavailable if
9 the actor intentionally, knowingly, or recklessly placed the actor
10 [~~himself~~] in a situation in which it was probable that the actor
11 [~~he~~] would be subjected to compulsion.

12 (e) It is no defense that a person acted at the command or
13 persuasion of the actor's [~~his~~] spouse, unless the actor [~~he~~] acted
14 under compulsion that would establish a defense under this section.

15 SECTION 11. Section 9.22, Penal Code, is amended to read as
16 follows:

17 Sec. 9.22. NECESSITY. (a) Conduct is justified if:

18 (1) the actor reasonably believes the conduct is
19 immediately necessary to avoid imminent harm;

20 (2) the desirability and urgency of avoiding the harm
21 clearly outweigh, according to ordinary standards of
22 reasonableness, the harm sought to be prevented by the law
23 proscribing the conduct; and

24 (3) a legislative purpose to exclude the justification
25 claimed for the conduct does not otherwise plainly appear.

26 (b) Conduct is justified if the conduct charged is a lawful
27 medical procedure performed by a physician or other licensed health

1 care provider and intended to remove an ectopic pregnancy that
2 seriously threatens the life of the mother when a reasonable
3 alternative to save the lives of both the mother and the unborn
4 child is unavailable.

5 SECTION 12. Chapter 19, Penal Code, is amended by adding
6 Section 19.07 to read as follows:

7 Sec. 19.07. TESTIMONIAL IMMUNITY FOR OFFENSES INVOLVING
8 DEATH OF UNBORN CHILD. (a) This section applies only to an offense
9 under this chapter involving the death of an unborn child.

10 (b) A party to an offense to which this section applies may
11 be required to provide evidence or testify about the offense.

12 (c) A party to an offense to which this section applies may
13 not be prosecuted for any offense about which the party is required
14 to provide evidence or testify, and the evidence and testimony may
15 not be used against the party in any adjudicatory proceeding except
16 a prosecution for aggravated perjury. For purposes of this
17 subsection, "adjudicatory proceeding" means a proceeding before a
18 court or any other agency of government in which the legal rights,
19 powers, duties, or privileges of specified parties are determined.

20 SECTION 13. Chapter 22, Penal Code, is amended by adding
21 Section 22.13 to read as follows:

22 Sec. 22.13. TESTIMONIAL IMMUNITY FOR OFFENSES INVOLVING
23 INJURY TO UNBORN CHILD. (a) This section applies only to an offense
24 under this chapter involving bodily injury to an unborn child.

25 (b) A party to an offense to which this section applies may
26 be required to provide evidence or testify about the offense.

27 (c) A party to an offense to which this section applies may

1 not be prosecuted for any offense about which the party is required
2 to provide evidence or testify, and the evidence and testimony may
3 not be used against the party in any adjudicatory proceeding except
4 a prosecution for aggravated perjury. For purposes of this
5 subsection, "adjudicatory proceeding" means a proceeding before a
6 court or any other agency of government in which the legal rights,
7 powers, duties, or privileges of specified parties are determined.

8 SECTION 14. Section 38.063(e-1), Education Code, is amended
9 to read as follows:

10 (e-1) A grant under this section may not be given to a
11 nonprofit organization that offers reproductive services,
12 contraceptive services, counseling, or referrals, or abortion [~~any~~
13 ~~other~~] services [~~that require a license under Chapter 245, Health~~
14 ~~and Safety Code,~~] or that is affiliated with a nonprofit
15 organization that is an abortion provider [~~licensed under Chapter~~
16 ~~245, Health and Safety Code~~].

17 SECTION 15. Section 161.006(b), Family Code, is amended to
18 read as follows:

19 (b) In this code, "abortion" means the act of using or
20 prescribing an instrument, a drug, a medicine, or any other
21 substance, device, or means with the intent to cause the death of an
22 unborn child of a woman known to be pregnant. The term does not
23 include birth control devices or oral contraceptives. An act is not
24 an abortion if the act is done with the intent to:

25 (1) save the life or preserve the health of an unborn
26 child;

27 (2) remove a dead, unborn child whose death was caused

1 by spontaneous abortion; or

2 (3) remove an ectopic pregnancy that seriously
3 threatens the life of the mother when a reasonable alternative to
4 save the lives of both the mother and the unborn child is
5 unavailable [~~has the meaning assigned by Section 245.002, Health~~
6 ~~and Safety Code~~].

7 SECTION 16. Section 266.010(a), Family Code, is amended to
8 read as follows:

9 (a) A foster child who is at least 16 years of age may
10 consent to the provision of medical care[~~, except as provided by~~
11 ~~Chapter 33,~~] if the court with continuing jurisdiction determines
12 that the child has the capacity to consent to medical care. If the
13 child provides consent by signing a consent form, the form must be
14 written in language the child can understand.

15 SECTION 17. Section 501.065, Government Code, is amended to
16 read as follows:

17 Sec. 501.065. CONSENT TO MEDICAL, DENTAL, PSYCHOLOGICAL,
18 AND SURGICAL TREATMENT. An inmate who is younger than 18 years of
19 age and is confined in a facility operated by or under contract with
20 the department may, in accordance with procedures established by
21 the department, consent to medical, dental, psychological, and
22 surgical treatment for the inmate by a licensed health care
23 practitioner, or a person under the direction of a licensed health
24 care practitioner[~~, unless the treatment would constitute a~~
25 ~~prohibited practice under Section 164.052(a)(19), Occupations~~
26 ~~Code~~].

27 SECTION 18. Sections 2272.001(1) and (2), Government Code,

1 as added by Chapter 501 (S.B. 22), Acts of the 86th Legislature,
2 Regular Session, 2019, are amended to read as follows:

3 (1) "Abortion" means the act of using or prescribing
4 an instrument, a drug, a medicine, or any other substance, device,
5 or means with the intent to cause the death of an unborn child of a
6 woman known to be pregnant. The term does not include birth control
7 devices or oral contraceptives. An act is not an abortion if the act
8 is done with the intent to:

9 (A) save the life or preserve the health of an
10 unborn child;

11 (B) remove a dead, unborn child whose death was
12 caused by spontaneous abortion; or

13 (C) remove an ectopic pregnancy that seriously
14 threatens the life of the mother when a reasonable alternative to
15 save the lives of both the mother and the unborn child is
16 unavailable [~~has the meaning assigned by Section 245.002, Health~~
17 ~~and Safety Code~~].

18 (2) "Abortion provider" means a person who performs or
19 induces an abortion [+

20 [~~(A) a facility licensed under Chapter 245,~~
21 ~~Health and Safety Code, or~~

22 [~~(B) an ambulatory surgical center licensed~~
23 ~~under Chapter 243, Health and Safety Code, that is used to perform~~
24 ~~more than 50 abortions in any 12-month period~~].

25 SECTION 19. Section 32.046(e), Health and Safety Code, is
26 amended to read as follows:

27 (e) For purposes of this section, "postpartum depression"

1 means a disorder in which a woman experiences moderate to severe
2 depression following a pregnancy[, ~~regardless of whether the~~
3 ~~pregnancy resulted in birth, or an act defined by Section~~
4 ~~245.002(1)~~].

5 SECTION 20. Section 248.003, Health and Safety Code, is
6 amended to read as follows:

7 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

8 (1) a home and community support services agency
9 required to be licensed under Chapter 142;

10 (2) a person required to be licensed under Chapter 241
11 (Texas Hospital Licensing Law);

12 (3) an institution required to be licensed under
13 Chapter 242;

14 (4) an ambulatory surgical center required to be
15 licensed under Chapter 243 (Texas Ambulatory Surgical Center
16 Licensing Act);

17 (5) a birthing center required to be licensed under
18 Chapter 244 (Texas Birthing Center Licensing Act);

19 (6) [~~a facility required to be licensed under Chapter~~
20 ~~245 (Texas Abortion Facility Reporting and Licensing Act)~~];

21 [~~(7)~~] a general residential operation, foster group
22 home, foster home, and child-placing agency, for children in foster
23 care or other residential care who are under the conservatorship of
24 the Department of Family and Protective Services; or

25 (7) [~~(8)~~] a person providing medical or nursing care
26 or services under a license or permit issued under other state law.

27 SECTION 21. The heading to Chapter 1218, Insurance Code, is

1 amended to read as follows:

2 CHAPTER 1218. COVERAGE FOR [~~ELECTIVE~~] ABORTION PROHIBITED [~~+~~
3 ~~PROHIBITIONS AND REQUIREMENTS~~]

4 SECTION 22. Section 1218.001, Insurance Code, is amended to
5 read as follows:

6 Sec. 1218.001. DEFINITION. In this chapter, "abortion"
7 means the act of using or prescribing an instrument, a drug, a
8 medicine, or any other substance, device, or means with the intent
9 to cause the death of an unborn child of a woman known to be
10 pregnant. The term does not include birth control devices or oral
11 contraceptives. An act is not an abortion if the act is done with
12 the intent to:

13 (1) save the life or preserve the health of an unborn
14 child;

15 (2) remove a dead, unborn child whose death was caused
16 by spontaneous abortion; or

17 (3) remove an ectopic pregnancy that seriously
18 threatens the life of the mother when a reasonable alternative to
19 save the lives of both the mother and the unborn child is
20 unavailable [~~"elective abortion" means an abortion, as defined by~~
21 ~~Section 245.002, Health and Safety Code, other than an abortion~~
22 ~~performed due to a medical emergency as defined by Section 171.002,~~
23 ~~Health and Safety Code].~~

24 SECTION 23. Section 1218.004, Insurance Code, is amended to
25 read as follows:

26 Sec. 1218.004. COVERAGE BY HEALTH BENEFIT PLAN. A health
27 benefit plan may not provide coverage for [~~elective~~] abortion [~~only~~

1 amended to read as follows:

2 (a) A physician or an applicant for a license to practice
3 medicine commits a prohibited practice if that person:

4 (1) submits to the board a false or misleading
5 statement, document, or certificate in an application for a
6 license;

7 (2) presents to the board a license, certificate, or
8 diploma that was illegally or fraudulently obtained;

9 (3) commits fraud or deception in taking or passing an
10 examination;

11 (4) uses alcohol or drugs in an intemperate manner
12 that, in the board's opinion, could endanger a patient's life;

13 (5) commits unprofessional or dishonorable conduct
14 that is likely to deceive or defraud the public, as provided by
15 Section 164.053, or injure the public;

16 (6) uses an advertising statement that is false,
17 misleading, or deceptive;

18 (7) advertises professional superiority or the
19 performance of professional service in a superior manner if that
20 advertising is not readily subject to verification;

21 (8) purchases, sells, barter, or uses, or offers to
22 purchase, sell, barter, or use, a medical degree, license,
23 certificate, or diploma, or a transcript of a license, certificate,
24 or diploma in or incident to an application to the board for a
25 license to practice medicine;

26 (9) alters, with fraudulent intent, a medical license,
27 certificate, or diploma, or a transcript of a medical license,

1 certificate, or diploma;

2 (10) uses a medical license, certificate, or diploma,
3 or a transcript of a medical license, certificate, or diploma that
4 has been:

5 (A) fraudulently purchased or issued;

6 (B) counterfeited; or

7 (C) materially altered;

8 (11) impersonates or acts as proxy for another person
9 in an examination required by this subtitle for a medical license;

10 (12) engages in conduct that subverts or attempts to
11 subvert an examination process required by this subtitle for a
12 medical license;

13 (13) impersonates a physician or permits another to
14 use the person's license or certificate to practice medicine in
15 this state;

16 (14) directly or indirectly employs a person whose
17 license to practice medicine has been suspended, canceled, or
18 revoked;

19 (15) associates in the practice of medicine with a
20 person:

21 (A) whose license to practice medicine has been
22 suspended, canceled, or revoked; or

23 (B) who has been convicted of the unlawful
24 practice of medicine in this state or elsewhere;

25 (16) performs or procures a criminal abortion, aids or
26 abets in the procuring of a criminal abortion, attempts to perform
27 or procure a criminal abortion, or attempts to aid or abet the

1 performance or procurement of a criminal abortion;

2 (17) directly or indirectly aids or abets the practice
3 of medicine by a person, partnership, association, or corporation
4 that is not licensed to practice medicine by the board;

5 (18) performs an abortion as defined by Section
6 161.006(b), Family Code, on a woman who is pregnant [~~with a viable~~
7 ~~unborn child during the third trimester of the pregnancy unless:~~

8 [~~(A) the abortion is necessary to prevent the~~
9 ~~death of the woman;~~

10 [~~(B) the viable unborn child has a severe,~~
11 ~~irreversible brain impairment; or~~

12 [~~(C) the woman is diagnosed with a significant~~
13 ~~likelihood of suffering imminent severe, irreversible brain damage~~
14 ~~or imminent severe, irreversible paralysis]; or~~

15 (19) [~~performs an abortion on an unemancipated minor~~
16 ~~without the written consent of the child's parent, managing~~
17 ~~conservator, or legal guardian or without a court order, as~~
18 ~~provided by Section 33.003 or 33.004, Family Code, unless the~~
19 ~~abortion is necessary due to a medical emergency, as defined by~~
20 ~~Section 171.002, Health and Safety Code;~~

21 [~~(20) otherwise performs an abortion on an~~
22 ~~unemancipated minor in violation of Chapter 33, Family Code;~~

23 [~~(21) performs or induces or attempts to perform or~~
24 ~~induce an abortion in violation of Subchapter C, F, or G, Chapter~~
25 ~~171, Health and Safety Code; or~~

26 [~~(22)] in complying with the procedures outlined in~~

27 Sections 166.045 and 166.046, Health and Safety Code, wilfully

1 fails to make a reasonable effort to transfer a patient to a
2 physician who is willing to comply with a directive.

3 SECTION 28. The following provisions are repealed:

- 4 (1) Section 71.003(c), Civil Practice and Remedies
5 Code;
- 6 (2) Chapter 33, Family Code;
- 7 (3) Sections 151.002(b), (c), (d), (e), (f), and (g),
8 Family Code;
- 9 (4) Section 2272.002, Government Code, as added by
10 Chapter 501 (S.B. 22), Acts of the 86th Legislature, Regular
11 Session, 2019;
- 12 (5) Chapters 170 and 171, Health and Safety Code;
- 13 (6) Section 241.007, Health and Safety Code;
- 14 (7) Section 241.011, Health and Safety Code;
- 15 (8) Section 243.017, Health and Safety Code;
- 16 (9) Chapter 245, Health and Safety Code;
- 17 (10) Section 285.202, Health and Safety Code;
- 18 (11) Section 1218.003, Insurance Code;
- 19 (12) Section 1218.005, Insurance Code;
- 20 (13) Section 1218.006, Insurance Code;
- 21 (14) Section 1696.002(b), Insurance Code;
- 22 (15) Chapter 103, Occupations Code;
- 23 (16) Section 164.052(c), Occupations Code;
- 24 (17) Section 164.055, Occupations Code;
- 25 (18) Section 164.0551, Occupations Code;
- 26 (19) Section 19.06, Penal Code;
- 27 (20) Section 20.01(5), Penal Code;

1 (21) Section 22.12, Penal Code; and

2 (22) Section 49.12, Penal Code.

3 SECTION 29. (a) The changes in law made by this Act apply
4 only to conduct that occurs on or after the effective date of this
5 Act. Conduct that occurs before the effective date of this Act is
6 governed by the law in effect immediately before the effective date
7 of this Act, and that law is continued in effect for that purpose.

8 (b) The changes in law made by this Act apply only to an
9 offense committed on or after the effective date of this Act. An
10 offense committed before the effective date of this Act is governed
11 by the law in effect when the offense was committed, and the former
12 law is continued in effect for that purpose. For purposes of this
13 section, an offense is committed before the effective date of this
14 Act if any element of the offense occurs before the effective date.

15 (c) Chapters 1218 and 1696, Insurance Code, as amended by
16 this Act, apply only to a health benefit plan delivered, issued for
17 delivery, or renewed on or after the effective date of this Act. A
18 health benefit plan delivered, issued for delivery, or renewed
19 before the effective date of this Act is governed by the law in
20 effect immediately before the effective date of this Act, and that
21 law is continued in effect for that purpose.

22 SECTION 30. Any federal statute, regulation, treaty, order,
23 or court decision that purports to supersede, stay, or overrule
24 this Act is in violation of the Texas Constitution and the United
25 States Constitution and is therefore void. The State of Texas, a
26 political subdivision of this state, and any agent of this state or
27 a political subdivision of this state may, but is not required to,

1 enter an appearance, special or otherwise, in any federal suit
2 challenging this Act.

3 SECTION 31. A provision of this Act is not severable from
4 any of the Act's other provisions. If any provision is held invalid,
5 all provisions are invalid.

6 SECTION 32. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect on the 91st day after the last day of
11 the legislative session.