

BILL ANALYSIS

C.S.H.B. 1280
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1973, the U.S. Supreme Court struck down the Texas statutes prohibiting abortion. Some say that although the Texas Legislature has never explicitly repealed those statutes, the 5th Circuit Court of Appeals, in *McCorvey v. Hill*, held that the pre-*Roe v. Wade* statutes prohibiting abortion were repealed by implication by the enactment of several post-*Roe v. Wade* laws regulating abortion. Interested parties assert that the 5th Circuit's opinion is not binding on a Texas court, but the court's opinion has created some doubt as to whether the pre-*Roe v. Wade* Texas abortion statutes would be enforceable if and when the U.S. Supreme Court overrules *Roe v. Wade*. C.S.H.B. 1280 seeks to allow the state of Texas to prohibit abortion to the extent permitted by the U.S. Supreme Court overruling, in whole or in part, *Roe v. Wade*, as modified by *Planned Parenthood v. Casey*, or by a federal constitutional amendment that would make such a prohibition lawful.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1280 amends the Health and Safety Code to create a second degree felony offense for a person who knowingly performs, induces, or attempts an abortion. The bill enhances the penalty for the offense to a first degree felony if the unborn child dies as a result of the offense. The bill also subjects a person who engages in the prohibited conduct to a civil penalty of not less than \$100,000 for each violation. The bill establishes the following circumstances as an exception to the application of the offense:

- the person performing, inducing, or attempting the abortion is a licensed physician;
- in the exercise of reasonable medical judgment, the pregnant female has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places her at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and
- the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function of the pregnant female.

C.S.H.B. 1280 prohibits a physician from taking an action that constitutes such an exception if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function. The bill establishes that medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation. The bill's provisions expressly may not be construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

C.S.H.B. 1280 requires the attorney general to file an action to recover an applicable civil penalty and authorizes the attorney general to recover attorney's fees and costs incurred in bringing the action. The bill clarifies that the fact that conduct is subject to a civil or criminal penalty under its provisions does not abolish or impair any remedy for the conduct that is available in a civil suit. The bill requires the appropriate licensing authority to revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of the bill's provisions.

C.S.H.B. 1280 includes a legislative finding that the State of Texas never repealed state statutes enacted before the ruling issued by the U.S. Supreme Court in *Roe v. Wade* that prohibit and criminalize abortion unless the mother's life is in danger.

C.S.H.B. 1280 takes effect, to the extent permitted, on the 30th day after one of the following:

- the issuance of a U.S. Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, thereby allowing the states to prohibit abortion;
- the issuance of any other U.S. Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of the states to prohibit abortion; or
- the adoption of an amendment to the U.S. Constitution that, wholly or partly, restores to the states the authority to prohibit abortion.

C.S.H.B. 1280 defines "abortion" by reference to Health and Safety Code provisions and provides for the meaning of the following terms: "fertilization," "pregnant," "reasonable medical judgment," and "unborn child."

C.S.H.B. 1280 declares its provisions to be severable. If any provision of the bill or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration does not affect the validity of the remaining portions of the bill.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1280 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

With respect to the provision providing for the bill's effect on the 30th day after the issuance of a U.S. Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, thereby allowing the states to prohibit abortion, the substitute adds a reference to judgment "in a decision" not included in the original.

With respect to the provision providing for the bill's effect on the 30th day after the issuance of any other U.S. Supreme Court judgment in a decision that recognizes, wholly or partly, the

authority of the states to prohibit abortion, the substitute adds a reference to a U.S. Supreme Court "judgment in" such a decision not included in the original.

The substitute includes a legislative finding not included in the original relating to statutes enacted before the ruling issued by the U.S. Supreme Court in *Roe v. Wade* that were never repealed, either expressly or by implication, that prohibit and criminalize abortion unless the mother's life is in danger.