87R1668 SRA-D

By:  Swanson H.B. No. 44

A BILL TO BE ENTITLED

AN ACT

relating to civil liability and criminal penalties for performing certain abortions; providing civil penalties; creating criminal offenses.

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

SECTION 1.  Section 71.002, Civil Practice and Remedies Code, is amended by adding Subsection (f) to read as follows:

(f)  A person is liable for damages arising from a violation of Section 170.002(a), 171.043, 171.044, 171.102, or 171.152, Health and Safety Code.

SECTION 2.  Section 71.004(b), Civil Practice and Remedies Code, is amended to read as follows:

(b)  The surviving spouse, children, and parents of the deceased may bring the action or one or more of those individuals may bring the action for the benefit of all. A next friend may bring an action for damages under Section 71.002(f).

SECTION 3.  Chapter 170, Health and Safety Code, is amended by adding Sections 170.003 and 170.004 to read as follows:

Sec. 170.003.  CRIMINAL PENALTY. (a) A person who violates Section 170.002(a) commits an offense.

(b)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the person has previously been convicted of an offense under this section or under Section 171.049, 171.103, or 171.153.

(c)  If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under this section or under both sections.

Sec. 170.004.  CIVIL PENALTY. (a) A person who violates Section 170.002(a) is liable to this state for a civil penalty of $30,000 for each violation.

(b)  The attorney general may sue to collect the penalty.

(c)  The attorney general shall file an action under this section in a district court in Travis County or the county in which the violation occurred.

(d)  The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 4.  Subchapter C, Chapter 171, Health and Safety Code, is amended by adding Sections 171.049 and 171.050 to read as follows:

Sec. 171.049.  CRIMINAL PENALTY. (a) A person who violates Section 171.043 or 171.044 commits an offense.

(b)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the person has previously been convicted of an offense under this section or under Section 170.003, 171.103, or 171.153.

(c)  If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under this section or under both sections.

Sec. 171.050.  CIVIL PENALTY. (a) A person who violates Section 171.043 or 171.044 is liable to this state for a civil penalty of $30,000 for each violation.

(b)  The attorney general may sue to collect the penalty.

(c)  The attorney general shall file an action under this section in a district court in Travis County or the county in which the violation occurred.

(d)  The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 5.  Section 171.103, Health and Safety Code, is amended to read as follows:

Sec. 171.103.  CRIMINAL PENALTY. (a) A person who violates Section 171.102 commits an offense.

(b)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the person has previously been convicted of an offense under this section or under Section 170.003, 171.049, or 171.153 [~~state jail felony~~].

(c)  If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under this section or under both sections.

SECTION 6.  Subchapter F, Chapter 171, Health and Safety Code, is amended by adding Section 171.1045 to read as follows:

Sec. 171.1045.  CIVIL PENALTY. (a) A person who violates Section 171.102 is liable to this state for a civil penalty of $30,000 for each violation.

(b)  The attorney general may sue to collect the penalty.

(c)  The attorney general shall file an action under this section in a district court in Travis County or the county in which the violation occurred.

(d)  The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 7.  Section 171.153, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b)  An offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if the person has previously been convicted of an offense under this section or under Section 170.003, 171.049, or 171.103 [~~state jail felony~~].

(c)  If conduct constituting an offense under this section also constitutes an offense under another section of this code or the Penal Code, the actor may be prosecuted under this section or under both sections.

SECTION 8.  Subchapter G, Chapter 171, Health and Safety Code, is amended by adding Section 171.1535 to read as follows:

Sec. 171.1535.  CIVIL PENALTY. (a) A person who violates Section 171.152 is liable to this state for a civil penalty of $30,000 for each violation.

(b)  The attorney general may sue to collect the penalty.

(c)  The attorney general shall file an action under this section in a district court in Travis County or the county in which the violation occurred.

(d)  The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 9.  The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law applicable to the cause of action immediately before that date, and that law is continued in effect for that purpose.

SECTION 10.  The changes in law made by this Act apply only to an abortion performed, induced, or attempted on or after the effective date of this Act. An abortion performed, induced, or attempted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 11.  This Act takes effect September 1, 2021.