By:  Hughes S.B. No. 1546

A BILL TO BE ENTITLED

AN ACT

relating to the construction of abortion laws and the waiver of certain requirements for a physician or abortion facility in performing or inducing an abortion.

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

SECTION 1.  Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036.  CONSTRUCTION OF ABORTION STATUTES. (a)  A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b)  A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c)  Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the constitutional rights of women seeking abortions shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law.

SECTION 2.  Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.0025 to read as follows:

Sec. 171.0025.  CONSTRUCTION OF CHAPTER. This chapter may not be construed to:

(1)  wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(2)  restrict a municipality or county from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

SECTION 3.  Chapter 171, Health and Safety Code, is amended by adding Subchapter H, and a heading is added to that subchapter to read as follows:

SUBCHAPTER H. ADMITTING PRIVILEGE AND DISCLOSURE REQUIREMENTS FOR PHYSICIANS

SECTION 4.  Section 171.0031, Health and Safety Code, is transferred to Subchapter H, Chapter 171, Health and Safety Code, as added by this Act, redesignated as Section 171.201, Health and Safety Code, and amended to read as follows:

Sec. 171.201 [~~171.0031~~].  ADMITTING PRIVILEGE AND DISCLOSURE REQUIREMENTS OF PHYSICIAN; OFFENSE; WAIVER. (a)  Except as provided by Subsection (c), a [~~A~~] physician performing or inducing an abortion:

(1)  must, on the date the abortion is performed or induced, have active admitting privileges at a hospital that:

(A)  is located not further than 30 miles from the location at which the abortion is performed or induced; and

(B)  provides obstetrical or gynecological health care services; and

(2)  shall provide the pregnant woman with:

(A)  a telephone number by which the pregnant woman may reach the physician, or other health care personnel employed by the physician or by the facility at which the abortion was performed or induced with access to the woman's relevant medical records, 24 hours a day to request assistance for any complications that arise from the performance or induction of the abortion or ask health-related questions regarding the abortion; and

(B)  the name and telephone number of the nearest hospital to the home of the pregnant woman at which an emergency arising from the abortion would be treated.

(b)  A physician who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor punishable by a fine only, not to exceed $4,000.

(c)  A physician must comply with the requirements of Subsection (a) to perform or induce an abortion unless the physician obtains a waiver under Section 171.202.

SECTION 5.  Subchapter H, Chapter 171, Health and Safety Code, as added by this Act, is amended by adding Sections 171.202, 171.203, 171.204, 171.205, 171.206, and 171.207 to read as follows:

Sec. 171.202.  WAIVER REQUEST PROCEDURES. (a)  To obtain a waiver described by Section 171.201(c), a physician must submit to the executive commissioner, in the form and manner required by the executive commissioner, a waiver request and supporting evidence to demonstrate that:

(1)  the physician has made every reasonable effort to obtain admitting privileges from each hospital located within 30 miles of the location where the physician performs or induces abortions;

(2)  notwithstanding the physician's best efforts, the physician is unable to obtain admitting privileges from a hospital described by Subdivision (1); and

(3)  the physician's compliance with the requirements under Section 171.201 imposes an undue burden on the physician's patients.

(b)  For purposes of Subsection (a), a physician's compliance with the requirements under Section 171.201 imposes an undue burden on the physician's patients if and only if the physician submits evidence showing that, as a result of the physician's inability to comply with the requirements, the patients will:

(1)  be unable to obtain an abortion from another abortion provider; or

(2)  encounter a substantial obstacle to obtaining an abortion.

(c)  Not later than the 60th day after the date the executive commissioner receives a waiver request under Subsection (a), the executive commissioner shall:

(1)  if the requesting physician submits evidence the executive commissioner determines is sufficient to satisfy the requirements of that subsection, provide to the physician a written statement approving the waiver and explaining the specific reasons for the approval; or

(2)  if the requesting physician submits evidence the executive commissioner determines is insufficient to satisfy the requirements of that subsection, provide to the physician a written statement denying the waiver and explaining the specific reasons for the denial.

(d)  A waiver obtained under this section expires on the first anniversary of the date the executive commissioner approves the waiver.

(e)  The executive commissioner may conduct any investigation necessary to verify evidence provided with a waiver request under Subsection (a).

(f)  If the executive commissioner fails to approve or deny a waiver request before the date required by Subsection (c), the requesting physician may seek a writ of mandamus from the supreme court to compel the executive commissioner to approve or deny the waiver.

Sec. 171.203.  APPEAL OF APPROVAL OR DENIAL OF WAIVER. (a)  A physician whose waiver request is denied by the executive commissioner under Section 171.202 may appeal the denial by applying for a writ of mandamus from the supreme court to review the executive commissioner's decision.

(b)  A citizen of this state may appeal the executive commissioner's approval of a waiver request under Section 171.202 by applying for a writ of mandamus from the supreme court to review the executive commissioner's decision.

(c)  The supreme court has exclusive jurisdiction over an action brought under this section and shall review de novo the executive commissioner's decision to approve or deny a waiver request under Section 171.202.

(d)  In an action brought under this section, the physician seeking a waiver under Section 171.202 at all times has the burden of proving by a preponderance of the evidence that the evidence the physician submits with the waiver request satisfies the requirements of Section 171.202(a).

Sec. 171.204.  CIVIL LIABILITY FOR VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against a person who violates Section 171.201.

(b)  If a claimant prevails in an action brought under this section, the court shall award:

(1)  injunctive relief;

(2)  statutory damages in an amount of not less than $10,000 for each violation; and

(3)  costs and attorney's fees if the court awards a remedy described by Subdivision (1) or (2).

(c)  Notwithstanding Subsection (b), a defendant is not required to pay statutory damages under this section if the defendant demonstrates that the defendant previously paid statutory damages in a previous action for that particular violation.

(d)  Notwithstanding Chapter 16, Civil Practice and Remedies Code, a person must bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e)  The following are not a defense to an action brought under this section:

(1)  ignorance or mistake of law;

(2)  a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4)  a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5)  nonmutual issue preclusion or nonmutual claim preclusion;

(6)  the consent of the unborn child's mother to the abortion; or

(7)  any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

Sec. 171.205.  CIVIL LIABILITY: MANDATORY VENUE. Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.204 must be brought in:

(1)  the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2)  the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3)  the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4)  the county of residence for the claimant if the claimant is a natural person residing in this state.

Sec. 171.206.  RULES. The executive commissioner shall adopt rules necessary to implement this subchapter.

Sec. 171.207.  AUTOMATIC REVOCATION OF WAIVER. A waiver obtained under this subchapter is automatically revoked and the executive commissioner may not approve a waiver on the issuance of a decision by the United States Supreme Court overruling *Whole Woman's Health v. Hellerstedt,* 136 S. Ct. 2292 (2016).

SECTION 6.  Chapter 245, Health and Safety Code, is amended by designating Sections 245.001, 245.002, 245.003, 245.004 as amended by Chapter 198, Acts of the 78th Legislature, Regular Session, 2003, 245.004 as amended by Chapter 999, Acts of the 78th Legislature, Regular Session, 2003, 245.005, 245.006, 245.007, 245.009, 245.0105, 245.011, 245.0115, 245.0116, 245.012, 245.013, 245.014, 245.015, 245.016, 245.017, 245.018, 245.019, 245.020, 245.021, 245.022, 245.023, 245.024, and 245.025 as Subchapter and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 7.  Subchapter A, Chapter 245, Health and Safety Code, as added by this Act, is amended by adding Section 245.0025 to read as follows:

Sec. 245.0025.  CONSTRUCTION OF CHAPTER. Nothing in this chapter may be construed to:

(1)  wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; of

(2)  restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

SECTION 8.  Chapter 245, Health and Safety Code, is amended by adding Subchapter B and a heading is added to that subchapter to read as follows:

SUBCHAPTER B. ABORTION FACILITY MINIMUM STANDARDS

SECTION 9.  Section 245.010, Health and Safety Code, is transferred to Subchapter B, Chapter 245, Health and Safety Code, as added by this Act, redesignated as Section 245.051, Health and Safety Code, and amended to read as follows:

Sec. 245.051 [~~245.010~~]. MINIMUM STANDARDS. (a)  The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility and must contain provisions requiring compliance with the requirements of Subchapter B, Chapter 171. On and after September 1, 2014, the minimum standards for an abortion facility must be equivalent to the minimum standards adopted under Section 243.010 for ambulatory surgical centers.

(b)  Only a physician as defined by Subtitle B, Title 3, Occupations Code, may perform an abortion.

(c) [~~(d)~~] This section does not authorize the executive commissioner to:

(1)  establish the qualifications of a licensed practitioner; or

(2)  permit a person to provide health care services who is not authorized to provide those services under other laws of this state.

SECTION 10.  Subchapter B, Chapter 245, Health and Safety Code, as added by this Act, is amended by adding Sections 245.052, 245.053, 245.054, 245.055, 245.056, 245.057, and 245.058 to read as follows:

Sec. 245.052.  COMPLIANCE WITH MINIMUM STANDARDS REQUIRED UNLESS WAIVER OBTAINED. An abortion facility must comply with the minimum standards for an ambulatory surgical center adopted under Section 245.051 for an abortion to be performed or induced at the facility unless the facility obtains a waiver under Section 245.053.

Sec. 245.053.  WAIVER REQUEST PROCEDURES. (a) To obtain a waiver described by Section 245.052, an abortion facility must submit to the executive commissioner, in the form and manner required by the executive commissioner, a waiver request and supporting evidence to demonstrate that:

(1)  the abortion facility has made every reasonable effort to comply with each minimum standard adopted under Section 245.051 related to ambulatory surgical centers;

(2)  the abortion facility is unable to comply and raise the money necessary to bring the facility into compliance with one or more specific minimum standards related to ambulatory surgical centers and, as a result of the facility's inability to comply with those specific minimum standards that it has identified, must stop providing abortions; and

(3)  the abortion facility's inability to provide abortions in compliance with each minimum standard adopted under Section 245.051 will impose an undue burden on the facility's patients.

(b)  For purposes of Subsection (a), an abortion facility demonstrates an undue burden only by submitting evidence that, as a result of the facility's inability to provide abortions in compliance with the minimum standards, the facility's patients will:

(1)  be unable to obtain an abortion from another abortion provider; or

(2)  encounter a substantial obstacle to obtaining an abortion.

(c)  Not later than the 60th day after the date the executive commissioner receives a waiver request under Subsection (a), the executive commissioner shall:

(1)  if the requesting abortion facility submits evidence the executive commissioner determines is sufficient to satisfy the requirements of that subsection for all or some of the minimum standards, provide to the facility a written statement approving the waiver for the specific minimum standards that the facility is unable to comply with and explaining the specific reasons for the approval; or

(2)  if the requesting abortion facility submits evidence the executive commissioner determines is insufficient to satisfy the requirements of that subsection for all or some of the minimum standards, provide to the facility a written statement denying the waiver for all or some of the minimum standards, as applicable, and explaining the specific reasons for the denial.

(d)  A waiver obtained under this section expires on the first anniversary of the date the executive commissioner approves the waiver.

(e)  The executive commissioner may conduct any investigation necessary to verify evidence provided with a waiver request under Subsection (a).

(f)  If the executive commissioner fails to approve or deny a waiver request before the date required by Subsection (c), the requesting abortion facility may seek a writ of mandamus from the supreme court to compel the executive commissioner to approve or deny the waiver.

Sec. 245.054.  APPEAL OF APPROVAL OR DENIAL OF WAIVER. (a) An abortion facility that submits a waiver request denied by the executive commissioner under Section 245.053, including partial denial of a waiver request for one or more minimum standards under Section 245.051, may appeal the denial by applying for a writ of mandamus from the supreme court to review the executive commissioner's decision.

(b)  A citizen of this state may appeal the executive commissioner's approval of a waiver request under Section 245.053 by applying for a writ of mandamus from the supreme court to review the executive commissioner's decision.

(c)  The supreme court has exclusive jurisdiction over an action brought under this section and shall review de novo the executive commissioner's decision to approve or deny a waiver request under Section 245.053.

(d)  In an action brought under this section, the abortion facility at all times has the burden of proving by a preponderance of the evidence that the evidence the facility submits with the waiver request under Section 245.053 satisfies the requirements of Section 245.053(a).

Sec. 245.055.  CIVIL LIABILITY FOR VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against an abortion facility that performs or induces an abortion in violation of this subchapter.

(b)  If a claimant prevails in an action brought under this section, the court shall award:

(1)  injunctive relief;

(2)  statutory damages in an amount of not less than $10,000 for each violation; and

(3)  costs and attorney's fees if the court awards a remedy described by Subdivision (1) or (2).

(c)  Notwithstanding Subsection (b), a defendant is not required to pay statutory damages under this section if the defendant demonstrates that the defendant previously paid statutory damages in a previous action for that particular violation.

(d)  Notwithstanding Chapter 16, Civil Practice and Remedies Code, a person must bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.

(e)  The following are not a defense to an action brought under this section:

(1)  ignorance or mistake of law;

(2)  a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4)  a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;

(5)  nonmutual issue preclusion or nonmutual claim preclusion;

(6)  the consent of the unborn child's mother to the abortion; or

(7)  any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.

Sec. 245.056.  CIVIL LIABILITY: MANDATORY VENUE. Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 245.055 must be brought in:

(1)  the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2)  the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3)  the county of the principal office in this state of any one of the defendants that is not a natural person; or

(4)  the county of residence for the claimant if the claimant is a natural person residing in this state.

Sec. 245.057.  RULES. The executive commissioner shall adopt the rules necessary to implement this subchapter.

Sec. 245.058.  AUTOMATIC REVOCATION OF WAIVER. A waiver obtained under this subchapter is automatically revoked and the executive commissioner may not approve a waiver on the issuance of a decision by the United States Supreme Court overruling *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

SECTION 11.  As soon as practicable after the effective date of this Act, the attorney general, the Texas Medical Board, and the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act.

SECTION 12.  The changes in law made by this Act apply to the performance or inducement of an abortion that occurs on or after January 1, 2022.

SECTION 13.  This Act takes effect September 1, 2021.