By:  Toth H.B. No. 1752

A BILL TO BE ENTITLED

AN ACT

relating to liability for the provision to certain children of procedures and treatments for gender transitioning, gender reassignment, or gender dysphoria; providing a civil penalty.

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

SECTION 1.  Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 74B to be read as follows:

CHAPTER 74B. LIABILITY FOR CAUSING THE STERILIZATION, CASTRATION, OR GENITAL MUTILATION OF A MINOR.

Sec. 74B.001.  LIABILITY PROVISIONS. (a) Any person who:

(1)  knowingly prescribes puberty blockers or hormone therapy to a minor for the purpose of transitioning a child's biological sex as determined by the sex organs, chromosomes, and endogenous profiles of the child or affirming the child's perception of the child's sex if that perception is inconsistent with the child's biological sex;

(2)  knowingly performs a sex-change operation on a minor; or

(3)  knowingly aids or abets the conduct described in subsections (1)-(3), shall be strictly, absolutely, and jointly and severally liable in tort for any personal injuries resulting from the conduct described in this subsection.

(b)  Notwithstanding any other law, a person injured by the conduct described in subsection (a) may bring a civil action against those who knowingly engaged in the conduct or knowingly aided or abetted the conduct that caused his injuries, and shall be entitled to recover:

(1)  nominal damages;

(2)  compensatory damages;

(3)  punitive damages in an amount of not less than $10,000,000 from each defendant if irreversible sterilization or sexual dysfunction results, in addition to any compensatory damages that may be awarded; and

(4)  costs and reasonable attorney's fees.

(c)  Notwithstanding any other law, a person may bring an action under this section not later than the 20th anniversary of the date the cause of action accrues.

(d)  Notwithstanding any other law, 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 or provisions of this chapter are unconstitutional or were unconstitutional;

(3)  a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the conduct described in subsection (a) occurred;

(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)  a defendant's reliance on any federal statute, agency rule or action, or treaty that has been repealed, superseded, or declared invalid or unconstitutional, even if that federal statute, agency rule or action, or treaty had not been repealed, superseded, or declared invalid or unconstitutional when the conduct described in subsection (a) occurred;

(6)  non-mutual issue preclusion or non-mutual claim preclusion;

(7)  the consent of the plaintiff to the defendant's conduct;

(8)  contributory or comparative negligence;

(9)  assumption of risk;

(10)  sovereign immunity, governmental immunity, official immunity, or qualified immunity;

(11)  the plaintiff's waiver or purported waiver of their right to sue under this section;

(12)  the plaintiff's failure to exhaust administrative remedies; or

(13)  any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Subsection (h).

(e)  Notwithstanding any other law, including Chapter 17, Civil Practice and Remedies Code, the courts of this state shall have personal jurisdiction over any defendant sued under this section to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

(f)  Notwithstanding any other law, the law of Texas shall apply to any gender-transitioning treatment provided to a resident or citizen of Texas, regardless of where that treatment occurred, and to any civil action brought under this Section, to the maximum extent permitted by the Constitution of the United States and the Constitution of Texas. Any contractual choice-of-law provision that purports to require the law of a different jurisdiction to apply shall be void as against public policy, and may not be enforced in any state or federal court. This section shall apply extraterritorially to the maximum extent permitted by the Constitution of the United States and the Constitution of Texas.

(g)  A civil action under this section may not be brought against any person that acted at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if the imposition of liability upon that person would violate the doctrines of preemption or intergovernmental immunity.

(h)  A defendant against whom an action is brought under this section may assert an affirmative defense to liability under this subsection if:

(1)  the imposition of liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(2)  the defendant

(A)  has standing to assert the rights of a third party under the tests for third-party standing established by the Supreme Court of the United States; and

(B)  demonstrates that the imposition of liability on the defendant will violate constitutional or federally protected rights belonging to that third party.

(i)  Nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of Texas law as a defense to liability under this section, or from asserting any other defense that might be available under any other source of law.

(j)  Notwithstanding any other law, the requirements of this section shall be enforced exclusively through the private civil actions described in Subsections (a) and (b). No direct or indirect enforcement of this section may be taken or threatened by the state, a political subdivision, a district or county attorney, or any officer or employee of this state or a political subdivision against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except through the private civil actions described in Subsections (a) and (b). This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

Sec. 74B.002  VENUE. (a) Notwithstanding any other law, including Chapter 15, Civil Practice and Remedies Code, a civil action brought under Section 1 may 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.

(b)  If a civil action is brought under Section 1 in any one of the venues described by Subsection (a), then the action may not be transferred to a different venue without the written consent of all parties.

(c)  Any contractual choice-of-forum provision that purports to require a civil action under Section 1 to be litigated in another forum shall be void as against public policy, and may not be enforced in any state or federal court.

Sec. 74B.003.  IMMUNITY FROM SUIT AND LIMITS ON STATE-COURT JURISDICTION. (a) Notwithstanding any other law, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under Section 1, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by section 5 of the Fourteenth Amendment, by the Bankruptcy Clause of Article I, or by Congress's powers to raise and support Armies and to provide and maintain a Navy.

(b)  Notwithstanding any other provision of law to the contrary, the immunities conferred by Subsection (a) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(c)  Notwithstanding any other provision of law to the contrary, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (a) unless it expressly waives or abrogates immunity with specific reference to this section.

(d)  Notwithstanding any other provision of law to the contrary, no attorney representing the state, its political subdivisions, or any officer, employee, or agent of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (a) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(e)  Notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, and sections 22.002, 22.221, and 24.007 through 24.011, Government Code, no court of this state may award declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would restrain the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under Section 1, and no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks such relief.

(f)  Nothing in this section or chapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this chapter as a defense to any action, claim, or counterclaim brought against that litigant.

(g)  Notwithstanding any other law, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (a), or the limitations on jurisdiction and relief imposed by Subsection (e), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(h)  Notwithstanding any other law, any writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain the state, its political subdivisions, any officer, employee, or agent of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 1 shall be regarded as a legal nullity and a violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or obeyed by any officer, employee, or agent of this state or a political subdivision, judicial or otherwise.

(i)  Notwithstanding any other law, any officer, employee, or agent of this state or a political subdivision, judicial or otherwise, who issues, enforces, or obeys a writ, injunction, or declaratory judgment described in Subsection (h) shall be subject to suit by any person who is prevented from or delayed in bringing a civil action under Section 1, and a claimant who prevails in an action brought under this section shall recover:

(1)  injunctive relief;

(2)  compensatory damages;

(3)  punitive damages of not less than $100,000; and

(4)  costs and reasonable attorney's fees.

(j)  Notwithstanding any other provision of law to the contrary, any person who violates Subsections (e) or (h):

(1)  may not assert and shall not be entitled to any type of immunity defense, including sovereign immunity, governmental immunity, official immunity, or judicial immunity;

(2)  may not and shall not be indemnified for any award of damages or costs and attorneys' fees entered against them, or for the costs of their legal defense; and

(3)  may not and shall not receive or obtain legal representation from the attorney general of this state in any action brought under Subsection (i).

(k)  Notwithstanding any other law, any person who sues and seeks any writ, injunction, or declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 1 shall pay the costs and attorneys' fees of the person sued. A person may bring a civil action to recover these costs and attorneys' fees in state or federal court. It shall not be defense to a civil action brought under this Subsection that:

(1)  the plaintiff failed to seek recovery of costs or attorney's fees in the underlying action;

(2)  the court in the underlying action declined to recognize or enforce the requirements of this Section; or

(3)  the court in the underlying action held that any provisions of this Section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 2.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.