

By: Cain

H.B. No. 65

A BILL TO BE ENTITLED

AN ACT

relating to abortion, including civil liability for distribution of abortion-inducing drugs; making conforming changes and harmonizing conforming provisions; authorizing a private civil right of action.

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

SECTION 1. This Act shall be known as the Women and Child Protection Act.

SECTION 2. Subtitle H, Title 2, Health and Safety Code, is amended by adding Chapter 171A to read as follows:

CHAPTER 171A. ABORTION-INDUCING DRUGS AND FACILITATION OF

ABORTION; ENFORCEMENT OF ABORTION LAWS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171A.001. DEFINITIONS. In this chapter:

(1) "Abortion" has the meaning assigned by Section 245.002.

(2) "Abortion-inducing drug" has the meaning assigned by Section 171.061.

(3) "Abortion provider" means a person that performs elective abortions.

(4) "Elective abortion" means an abortion performed or induced by a licensed physician that is not performed or induced in response to a medical emergency.

(5) "Information content provider" means a person who

1 is responsible, wholly or partly, for the creation or development
2 of information provided through the Internet or any other
3 interactive computer service.

4 (6) "Interactive computer service" means an information
5 service, system, or access software provider that provides or
6 enables computer access by multiple users to a computer server,
7 including specifically a service or system providing access to the
8 Internet and such systems operated or services offered by libraries
9 or educational institutions. The term does not include:

10 (A) an Internet service provider or the provider's
11 affiliates or subsidiaries;

12 (B) a search engine; or

13 (C) a cloud service provider that solely provides
14 access or connection to or from an Internet website or other
15 information or content on the Internet or on a facility, system,
16 or network that is not under the provider's control, including
17 transmission, downloading, intermediate storage, access software,
18 or other services.

19 (7) "Medical emergency" has the meaning assigned by
20 Section 171.002.

21 Sec. 171A.002. CONSTRUCTION OF CHAPTER RELATED TO LIABILITY.
22 This chapter may not be construed to impose liability on the speech
23 or conduct of:

24 (1) an Internet service provider or the provider's
25 affiliates or subsidiaries;

26 (2) a search engine; or

27 (3) a cloud service provider that solely provides

1 access or connection to or from an Internet website or other
2 information or content on the Internet or on a facility, system,
3 or network that is not under the provider's control, including
4 transmission, downloading, intermediate storage, access software,
5 or other services.

6 SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

7 Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING
8 DRUGS. (a) Except as provided by Subsection (b), a person may
9 not:

10 (1) manufacture or distribute an abortion-inducing drug
11 in this state; or

12 (2) mail, transport, deliver, prescribe, or provide an
13 abortion-inducing drug in any manner to any person or location in
14 this state.

15 (b) Notwithstanding any other law, Subsection (a) does not
16 prohibit:

17 (1) speech or conduct protected by the First Amendment
18 to the United States Constitution, as made applicable to the states
19 through the United States Supreme Court's interpretation of the
20 Fourteenth Amendment to the United States Constitution or
21 protected by Section 8, Article I, Texas Constitution;

22 (2) conduct this state is prohibited from regulating
23 under the Texas Constitution or federal law, including the United
24 States Constitution;

25 (3) conduct of a pregnant woman who aborts or seeks to
26 abort the woman's unborn child;

27 (4) the possession, distribution, mailing, transport,

delivery, or provision of an abortion-inducing drug for a purpose that does not include performing, inducing, attempting, or assisting an abortion;

(5) the possession, distribution, mailing, transport, delivery, or provision of an abortion-inducing drug for the purpose of enabling a licensed physician to treat a pregnant woman during a medical emergency;

(6) the possession of an abortion-inducing drug for purposes of entrapping a person that violates this section; or

(7) conduct engaged in by a person under the direction of a federal agency, contractor, or employee to carry out a duty under federal law, if prohibiting that conduct would violate the doctrine of preemption or intergovernmental immunity.

Sec. 171A.052. EXCLUSIVE ENFORCEMENT; EFFECT OF OTHER LAW.

(a) Notwithstanding any other law, this subchapter may only be enforced through a qui tam or private civil action brought under Subchapter C, D, or E.

(b) No other direct or indirect enforcement of this subchapter may be taken or threatened by this state, a political subdivision of this state, a district or county attorney, or any officer or employee of this state or a political subdivision of this state against any person, by any means whatsoever, and no violation of this subchapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Subchapter C, D, or E.

(c) This section does not preclude or limit the enforcement of any other law or regulation against conduct that is

1 independently prohibited by the other law or regulation and that
2 would remain prohibited by the other law or regulation in the
3 absence of this subchapter.

4 SUBCHAPTER C. CIVIL LIABILITY FOR DISTRIBUTION OF ABORTION-
5 INDUCING DRUGS

6 Sec. 171A.101. CIVIL ACTION FOR DISTRIBUTION OF ABORTION-
7 INDUCING DRUGS. (a) Notwithstanding any other law and except as
8 provided by this subchapter, a person who manufactures,
9 distributes, mails, prescribes, or provides an abortion-inducing
10 drug, or who engages in any conduct prohibited by Section 171A.051
11 is strictly, absolutely, and jointly and severally liable for:

12 (1) the wrongful death of an unborn child or pregnant
13 woman from the use of the abortion-inducing drug; and

14 (2) personal injury of an unborn child or pregnant
15 woman from the use of the abortion-inducing drug.

16 (b) A claimant may not bring an action under this section if
17 the action is preempted by 47 U.S.C. Section 230(c).

18 (c) A person who engages in conduct described by Subsection
19 (a) is liable for damages resulting from the death or personal
20 injury sustained by an unborn child or pregnant woman if the
21 person's conduct contributed in any way to the death or injury,
22 regardless of whether the person's conduct was the actual or
23 proximate cause of the death or injury.

24 (d) Notwithstanding any other law, the mother or father of
25 an unborn child may bring a civil action under this section for
26 the wrongful death of the unborn child from the use of an abortion-
27 inducing drug, regardless of whether the other parent brings a

1 civil action for the wrongful death. The biological father of an
2 unborn child may bring the action regardless of whether the father
3 was married to the unborn child's mother at the time of the unborn
4 child's conception or death.

5 (e) Notwithstanding any other law, a civil action may not be
6 brought under this section:

7 (1) against the woman who used or sought to obtain
8 abortion-inducing drugs to abort or attempt to abort her unborn
9 child;

10 (2) against a person that acted under the direction of
11 a federal agency, contractor, or employee who is carrying out
12 duties under federal law if the imposition of liability would
13 violate the doctrine of preemption or intergovernmental immunity;
14 or

15 (3) by any person who impregnated the woman who used
16 abortion-inducing drugs through conduct constituting sexual
17 assault under Section 22.011, Penal Code, or aggravated sexual
18 assault under Section 22.021, Penal Code, or by another person who
19 acts in concert or participation with that person.

20 (f) Notwithstanding any other law, including rules of civil
21 procedure adopted under Chapter 26, Civil Practice and Remedies
22 Code, an action brought under this section may not be litigated on
23 behalf of a claimant class or a defendant class, and a court may
24 not certify a class in the action.

25 Sec. 171A.102. DEFENSES. (a) It is an affirmative defense
26 to an action brought under Section 171A.101 that the defendant:

27 (1) was unaware the defendant was engaged in the

1 conduct described by Section 171A.101(a); and

2 (2) took every reasonable precaution to ensure the
3 defendant would not manufacture, distribute, mail, prescribe, or
4 provide or aid or abet the manufacture, distribution, mailing,
5 prescription, or provision of abortion-inducing drugs.

6 (b) A defendant has the burden of proving an affirmative
7 defense under Subsection (a) by a preponderance of the evidence.

8 (c) Notwithstanding any other law, the following are not a
9 defense to an action brought under Section 171A.101:

10 (1) ignorance or mistake of law;

11 (2) a defendant's belief the requirements or provisions
12 of this chapter are unconstitutional or were unconstitutional;

13 (3) a defendant's reliance on a court decision that has
14 been vacated, reversed, or overruled on appeal or by a subsequent
15 court, even if the court decision had not been vacated, reversed,
16 or overruled when the cause of action accrued;

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

20 (5) a defendant's reliance on a federal statute, agency
21 rule or action, or treaty that has been repealed, superseded, or
22 declared invalid or unconstitutional, even if the federal statute,
23 agency rule or action, or treaty had not been repealed, superseded,
24 or declared invalid or unconstitutional when the cause of action
25 accrued;

26 (6) the laws of another state or jurisdiction,
27 including an interstate abortion shield law, unless the Texas

1 Constitution or federal law, including the United States
2 Constitution, compels the court to enforce that law;

3 (7) non-mutual issue preclusion or non-mutual claim
4 preclusion;

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

7 (9) contributory or comparative negligence;

8 (10) assumption of risk;

9 (11) entrapment;

10 (12) lack of actual or proximate cause;

11 (13) sovereign immunity, governmental immunity, or
12 official immunity; or

13 (14) a claim that the enforcement of this chapter or
14 the imposition of civil liability against the defendant will
15 violate the constitutional or federally protected rights of third
16 parties, except as provided by Section 171A.251.

17 Sec. 171A.103. MARKET-SHARE LIABILITY. Notwithstanding any
18 other law, if a claimant who brings an action under Section
19 171A.101 is unable to identify the specific manufacturer of the
20 abortion-inducing drug that caused the death or injury that is the
21 basis for the action, the liability is apportioned among all
22 manufacturers of abortion-inducing drugs in proportion to each
23 manufacturer's share of the national market for abortion-inducing
24 drugs at the time the death or injury occurred.

25 Sec. 171A.104. STATUTE OF LIMITATIONS. Notwithstanding any
26 other law, a person may bring an action under Section 171A.101 not
27 later than the sixth anniversary of the date the cause of action

1 accrues.

2 Sec. 171A.105. WAIVER PROHIBITED. Notwithstanding any other
3 law, a waiver or purported waiver of the right to bring an action
4 under Section 171A.101 is void as against public policy and is not
5 enforceable in any court.

6 Sec. 171A.106. OTHER DEFENSES. Notwithstanding any other
7 law, this subchapter does not impose liability for:

8 (1) death or personal injury resulting from an abortion
9 performed or induced by a licensed physician in response to a
10 medical emergency;

11 (2) speech or conduct protected by the First Amendment
12 to the United States Constitution, as made applicable to the states
13 through the United States Supreme Court's interpretation of the
14 Fourteenth Amendment to the United States Constitution, or
15 protected by Section 8, Article I, Texas Constitution;

16 (3) conduct this state is prohibited from regulating
17 under the Texas Constitution or federal law, including the United
18 States Constitution;

19 (4) conduct of a pregnant woman who aborts or seeks to
20 abort her unborn child;

21 (5) the possession, distribution, mailing, transport,
22 delivery, or provision of an abortion-inducing drug for the purpose
23 of enabling a licensed physician to treat a pregnant woman during
24 a medical emergency; or

25 (6) conduct a person engages in under the direction of
26 a federal agency, contractor, or employee to carry out a duty under
27 federal law, if a prohibition on that conduct would violate the

1 doctrine of preemption or intergovernmental immunity.

2 Sec. 171A.107. JURISDICTION; APPLICABILITY OF STATE LAW.

3 (a) Notwithstanding any other law, including Subchapter C, Chapter
4 17, Civil Practice and Remedies Code, the courts of this state
5 have personal jurisdiction over a defendant sued under Section
6 171A.101 to the maximum extent permitted by the Fourteenth
7 Amendment to the United States Constitution and the defendant may
8 be served outside this state.

9 (b) Notwithstanding any other law, the law of this state
10 applies to the use of an abortion-inducing drug by a resident of
11 this state, regardless of where the use of the drug occurs, and to
12 an action brought under Section 171A.101 to the maximum extent
13 permitted by the Texas Constitution and federal law, including the
14 United States Constitution.

15 (c) Notwithstanding any other law, any contractual choice-
16 of-law provision that requires or purports to require application
17 of the laws of a different jurisdiction is void based on this
18 state's public policy and is not enforceable in any court.

19 (d) Notwithstanding any other law, Chapters 27 and 110,
20 Civil Practice and Remedies Code, do not apply to an action brought
21 under Section 171A.101.

22 Sec. 171A.108. COORDINATED ENFORCEMENT PROHIBITED. (a)

23 Notwithstanding any other law, this state, a political subdivision
24 of this state, or an officer or employee of this state or a
25 political subdivision of this state may not:

26 (1) act in concert or participation with a claimant
27 bringing an action under Section 171A.101;

1 (2) establish or attempt to establish any type of
2 agency or fiduciary relationship with a claimant bringing an action
3 under Section 171A.101;

4 (3) attempt to control or influence a person's decision
5 to bring an action under Section 171A.101 or that person's conduct
6 of the litigation; or

7 (4) intervene in an action brought under Section
8 171A.101.

9 (b) This section does not prohibit this state, a political
10 subdivision of this state, or an officer or employee of this state
11 or a political subdivision of this state from filing an amicus
12 curiae brief in an action brought under Section 171A.101 if the
13 state, political subdivision, officer, or employee does not act in
14 concert or participation with the claimant who brings the action.

15 SUBCHAPTER D. QUI TAM ENFORCEMENT OF PROHIBITIONS RELATING TO
16 ABORTION-INDUCING DRUGS

17 Sec. 171A.151. QUI TAM ACTION AUTHORIZED. (a) Except as
18 provided by this section, a person, other than a political
19 subdivision of this state or an officer or employee of a political
20 subdivision of this state, has standing to bring and may bring a
21 qui tam action against a person who:

22 (1) violates Section 171A.051; or

23 (2) intends to violate Section 171A.051.

24 (b) An action brought under this section must be brought in
25 the name of the qui tam relator and of the state.

26 (c) A qui tam relator may not bring an action under this
27 section if the action is preempted by 47 U.S.C. Section 230(c).

1 (d) Notwithstanding any other law, a qui tam action may not
2 be brought under this section:

3 (1) against the woman who used or sought to obtain
4 abortion-inducing drugs to abort or attempt to abort her unborn
5 child;

6 (2) against a person that acted under the direction of
7 a federal agency, contractor, or employee who is carrying out
8 duties under federal law if the imposition of liability would
9 violate the doctrine of preemption or intergovernmental immunity;

10 (3) against a common carrier that:

11 (A) transports a pregnant woman or other passenger
12 to an abortion provider; and

13 (B) is unaware the passenger is traveling to an
14 abortion provider; or

15 (4) by any person who impregnated the woman who used or
16 sought to obtain abortion-inducing drugs through conduct
17 constituting sexual assault under Section 22.011, Penal Code, or
18 aggravated sexual assault under Section 22.021, Penal Code, or by
19 another person who acts in concert or participation with that
20 person.

21 (e) Notwithstanding any other law, including rules of civil
22 procedure adopted under Chapter 26, Civil Practice and Remedies
23 Code, an action brought under this section may not be litigated on
24 behalf of a claimant class or a defendant class, and a court may
25 not certify a class in the action.

26 Sec. 171A.152. DEFENSES. (a) It is an affirmative defense
27 to an action brought under Section 171A.151 that the defendant:

1 (1) was unaware the defendant was engaged in the
2 conduct prohibited by Section 171A.051; and

3 (2) took every reasonable precaution to ensure the
4 defendant would not violate Section 171A.051.

5 (b) A defendant has the burden of proving an affirmative
6 defense under Subsection (a) by a preponderance of the evidence.

7 (c) Notwithstanding any other law, the following are not a
8 defense to an action brought under Section 171A.151:

9 (1) ignorance or mistake of law;

10 (2) a defendant's belief the requirements or provisions
11 of this chapter are unconstitutional or were unconstitutional;

12 (3) a defendant's reliance on a court decision that has
13 been vacated, reversed, or overruled on appeal or by a subsequent
14 court, even if the court decision had not been vacated, reversed,
15 or overruled when the cause of action accrued;

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

19 (5) a defendant's reliance on a federal statute, agency
20 rule or action, or treaty that has been repealed, superseded, or
21 declared invalid or unconstitutional, even if the federal statute,
22 agency rule or action, or treaty had not been repealed, superseded,
23 or declared invalid or unconstitutional when the cause of action
24 accrued;

25 (6) the laws of another state or jurisdiction,
26 including an interstate abortion shield law, unless the Texas
27 Constitution or federal law, including the United States

1 Constitution, compels the court to enforce that law;

2 (7) non-mutual issue preclusion or non-mutual claim
3 preclusion;

4 (8) entrapment;

5 (9) sovereign immunity, governmental immunity, or
6 official immunity; or

7 (10) a claim that the enforcement of this chapter or
8 the imposition of civil liability against the defendant will
9 violate the constitutional or federally protected rights of third
10 parties, except as provided by Section 171A.251.

11 Sec. 171A.153. STATUTE OF LIMITATIONS. Notwithstanding any
12 other law, a person may bring an action under Section 171A.151 not
13 later than the sixth anniversary of the date the cause of action
14 accrues.

15 Sec. 171A.154. REMEDIES. (a) Except as provided by
16 Subsection (b), if a qui tam relator prevails in an action brought
17 under Section 171A.151, the court shall award to the relator:

18 (1) injunctive relief sufficient to prevent the
19 defendant from violating Section 171A.051;

20 (2) statutory damages in an amount of not less than
21 \$100,000 for each violation of Section 171A.051; and

22 (3) costs and reasonable attorney's fees.

23 (b) A court may not award relief under Subsection (a) (2) or
24 (a) (3) in response to a violation of Section 171A.051 if the
25 defendant demonstrates that a court already ordered the defendant
26 to pay damages under Subsection (a) (2) in another action for that
27 particular violation.

1 (c) Notwithstanding any other law, a court may not award
2 costs or attorney's fees to a defendant against whom an action is
3 brought under Section 171A.151.

4 Sec. 171A.155. CONSTRUCTION OF SUBCHAPTER RELATED TO FIRST
5 AMENDMENT PROTECTIONS. This subchapter may not be construed to
6 impose liability on speech or conduct protected by the First
7 Amendment to the United States Constitution, as made applicable to
8 the states through the United States Supreme Court's
9 interpretation of the Fourteenth Amendment to the United States
10 Constitution, or protected by Section 8, Article I, Texas
11 Constitution.

12 Sec. 171A.156. COORDINATED ENFORCEMENT PROHIBITED. (a)
13 Notwithstanding any other law, a political subdivision of this
14 state or an officer or employee of a political subdivision of this
15 state may not:

16 (1) act in concert or participation with a qui tam
17 relator bringing an action under Section 171A.151;

18 (2) establish or attempt to establish any type of
19 agency or fiduciary relationship with a qui tam relator bringing
20 an action under Section 171A.151;

21 (3) attempt to control or influence a person's decision
22 to bring an action under Section 171A.151 or that person's conduct
23 of the litigation; or

24 (4) intervene in an action brought under Section
25 171A.151.

26 (b) This section does not prohibit a political subdivision
27 of this state or an officer or employee of a political subdivision

1 of this state from filing an amicus curiae brief in an action
2 brought under Section 171A.151 if the political subdivision,
3 officer, or employee does not act in concert or participation with
4 the qui tam relator.

5 Sec. 171A.157. JURISDICTION; APPLICABILITY OF STATE LAW.

6 (a) Notwithstanding any other law, including Subchapter C, Chapter
7 17, Civil Practice and Remedies Code, the courts of this state
8 have personal jurisdiction over a defendant sued under Section
9 171A.151 to the maximum extent permitted by the Fourteenth
10 Amendment to the United States Constitution and the defendant may
11 be served outside this state.

12 (b) Notwithstanding any other law, the law of this state
13 applies to an action brought under Section 171A.151 to the maximum
14 extent permitted by the Texas Constitution or federal law,
15 including the United States Constitution.

16 (c) Notwithstanding any other law, any contractual choice-
17 of-law provision that requires or purports to require application
18 of the laws of a different jurisdiction is void based on this
19 state's public policy and is not enforceable in any court.

20 (d) Notwithstanding any other law, Chapters 27 and 110,
21 Civil Practice and Remedies Code, do not apply to an action brought
22 under Section 171A.151.

23 SUBCHAPTER E. PROVISIONS GENERALLY APPLICABLE TO CIVIL

24 LIABILITY FOR FACILITATING ABORTION

25 Sec. 171A.251. AFFIRMATIVE DEFENSE. (a) A defendant
26 against whom an action is brought under Section 171A.101 or
27 171A.151 may assert an affirmative defense to liability under this

1 section if:

2 (1) the imposition of civil liability on the defendant
3 will violate the defendant's personal constitutional or federally
4 protected rights;

5 (2) the defendant:

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

9 (B) demonstrates the imposition of civil liability
10 on the defendant will violate constitutional or federally
11 protected rights belonging to a third party;

12 (3) the imposition of civil liability on the defendant
13 will violate the defendant's rights under the Texas Constitution;
14 or

15 (4) the imposition of civil liability on the defendant
16 would violate the limits on extraterritorial jurisdiction imposed
17 by the United States Constitution or the Texas Constitution.

18 (b) The defendant has the burden of proving an affirmative
19 defense described by Subsection (a) by a preponderance of the
20 evidence.

21 Sec. 171A.252. CONSTRUCTION OF CHAPTER WITH RESPECT TO CIVIL
22 LIABILITY AND ENFORCEMENT. This chapter may not be construed to
23 limit or preclude a defendant from asserting the
24 unconstitutionality of any provision or application of the laws of
25 this state as a defense to liability under Section 171A.101 or
26 171A.151 from asserting any other defense that might be available
27 under any other source of law.

1 Sec. 171A.253. APPLICATION OF OTHER LAW. (a)

2 Notwithstanding any other law, a court may not apply the law of
3 another state or jurisdiction to any civil or qui tam action
4 brought under Section 171A.101 or 171A.151 unless the Texas
5 Constitution or federal law, including the United States
6 Constitution, compels it to do so.

7 (b) Notwithstanding any other law, any contractual choice-
8 of-law provision that requires or purports to require application
9 of the laws of a different jurisdiction is void based on this
10 state's public policy and is not enforceable in any court.

11 Sec. 171A.254. VENUE. (a) Notwithstanding any other law,
12 including Chapter 15, Civil Practice and Remedies Code, a civil or
13 qui tam action brought under Section 171A.101 or 171A.151 may be
14 brought in:

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

17 (2) the county of a defendant's residence at the time
18 the cause of action accrued if a defendant is an individual;

19 (3) the county of the principal office in this state of
20 a defendant that is not an individual; or

21 (4) the county of the claimant's residence if the
22 claimant is an individual residing in this state.

23 (b) If a civil or qui tam action is brought under Section
24 171A.101 or 171A.151 in a venue described by Subsection (a), the
25 action may not be transferred to a different venue without the
26 written consent of all parties.

27 (c) Notwithstanding any other law, any contractual choice-

1 of-forum provision that requires or purports to require a civil or
2 qui tam action under Sections 171A.101 or 171A.151 to be litigated
3 in a particular forum is void based on this state's public policy
4 and is not enforceable in any court.

5 Sec. 171A.255. PROTECTION FROM COUNTER ACTIONS. If an
6 action is brought against a person or a judgment is entered against
7 a person based wholly or partly on the person's decision to bring
8 or threat to bring an action under Section 171A.101 or 171A.151
9 the person may recover damages from the claimant who brought the
10 action or obtained the judgment or who has sought to enforce the
11 judgment. The damages must include:

12 (1) compensatory damages created by the action or
13 judgment, including money damages in an amount of the judgment and
14 costs, expenses, and reasonable attorney's fees spent in defending
15 the action;

16 (2) costs, expenses, and reasonable attorney's fees
17 incurred in bringing an action under this section; and

18 (3) additional statutory damages in an amount of not
19 less than \$100,000.

20 SUBCHAPTER F. PROVISIONS RELATING TO ENFORCEMENT OF ABORTION
21 LAWS

22 Sec. 171A.351. DEFINITION. In this subchapter, "criminal
23 abortion law" means any law of this state imposing criminal
24 penalties on abortion, including Chapter 6-1/2, Title 71, Revised
25 Statutes.

26 Sec. 171A.352. ATTORNEY GENERAL ACTION FOR VIOLATION OF
27 CERTAIN ABORTION LAWS. (a) The attorney general has parens

1 patriae standing to bring a civil action under this section on
2 behalf of unborn children of residents of this state.

3 (b) The attorney general may bring a civil action for damages
4 or injunctive relief on behalf of an unborn child of a resident of
5 this state against a person who violates any criminal abortion law
6 of this state except for Subchapter H, Chapter 171, or Subchapter
7 B, C, D, or E of this chapter.

8 Sec. 171A.353. FEE SHIFTING. (a) Notwithstanding any other
9 law, a person, including an entity, attorney, or law firm, who
10 seeks declaratory or injunctive relief to prevent a person,
11 including this state, a political subdivision of this state, or an
12 officer, employee, or agent of this state or a political
13 subdivision of this state, from enforcing or bringing an action to
14 enforce a law, including a statute, ordinance, rule, or regulation,
15 that regulates or restricts abortion or that limits taxpayer
16 funding for persons that perform or promote abortions in any state
17 or federal court, or who represents a litigant seeking such relief
18 in any state or federal court, is jointly and severally liable to
19 pay the costs and reasonable attorney's fees of the prevailing
20 party in the action seeking declaratory or injunctive relief,
21 including the costs and reasonable attorney's fees that the
22 prevailing party incurs in its efforts to recover costs and fees.

23 (b) For purposes of this section, a party is considered a
24 prevailing party if:

25 (1) a state or federal court dismisses a claim or cause
26 of action brought against the party by a litigant that seeks the
27 declaratory or injunctive relief described by Subsection (a),

1 regardless of the reason for the dismissal;

2 (2) a state or federal court enters judgment in the
3 party's favor on that claim or cause of action; or

4 (3) the litigant that seeks the declaratory or
5 injunctive relief described by Subsection (a) voluntarily
6 dismisses or nonsuits its claims against the party under Rule 41,
7 Federal Rules of Civil Procedure, Rule 162, Texas Rules of Civil
8 Procedure, or any other procedural rule.

9 (c) A prevailing party may recover costs and reasonable
10 attorney's fees under this section only to the extent that those
11 costs and attorney's fees were incurred while defending claims or
12 causes of action on which the party prevailed.

13 (d) Regardless of whether a prevailing party sought to
14 recover costs or attorney's fees in the underlying action, a
15 prevailing party under this section may bring a civil action to
16 recover costs and attorney's fees against a person, including an
17 entity, attorney, or law firm, who sought declaratory or injunctive
18 relief described by Subsection (a) not later than the third
19 anniversary of the date on which, as applicable:

20 (1) the dismissal or judgment described by Subsection
21 (b) becomes final on the conclusion of appellate review; or

22 (2) the time for seeking appellate review expires.

23 (e) It is not a defense to a civil action brought under
24 Subsection (d) that:

25 (1) a prevailing party under this section failed to
26 seek recovery of costs or attorney's fees in the underlying action;

27 (2) the court in the underlying action declined to

1 recognize or enforce this section; or

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

6 (f) Notwithstanding any other law, including Chapter 15,
7 Civil Practice and Remedies Code, a civil action brought under
8 Subsection (d) may be brought in:

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

11 (2) the county of residence of a defendant at the time
12 the cause of action accrued, if the defendant is an individual;

13 (3) the county of the principal office in this state of
14 a defendant that is not an individual; or

15 (4) the county of residence of the claimant, if the
16 claimant is an individual residing in this state.

17 (g) If a civil action is brought under Subsection (d) in a
18 venue described by Subsection (f), the action may not be
19 transferred to a different venue without the written consent of
20 all parties.

21 (h) Notwithstanding any other law, any contractual choice-
22 of-forum provision that purports to require a civil action under
23 Subsection (d) be litigated in another forum is void based on this
24 state's public policy and is not enforceable in any state or
25 federal court.

26 SUBCHAPTER G. IMMUNITY AND LIMITS ON STATE-COURT JURISDICTION

27 Sec. 171A.401. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL

1 IMMUNITY. (a) Notwithstanding any other law, the state has
2 sovereign immunity, a political subdivision of this state has
3 governmental immunity, and an officer or employee of this state or
4 a political subdivision of this state has official immunity in an
5 action, claim, counterclaim, or any other type of legal or
6 equitable action that:

7 (1) challenges the validity of any provision or
8 application of this chapter, on constitutional grounds or
9 otherwise; or

10 (2) seeks to prevent or enjoin this state, a political
11 subdivision of this state, or an officer, employee, or agent of
12 this state or a political subdivision of this state from:

13 (A) enforcing any provision or application of this
14 chapter; or

15 (B) filing, hearing, adjudicating, or docketing an
16 action brought under Section 171A.101 or 171A.151.

17 (b) Sovereign immunity conferred by this section includes
18 the constitutional sovereign immunity recognized by the United
19 States Supreme Court, which applies in both state and federal court
20 and may not be abrogated by Congress or by a state or federal court
21 except under congressional legislation authorized by:

22 (1) Section 5 of the Fourteenth Amendment, United
23 States Constitution;

24 (2) the Bankruptcy Clause of Article I, United States
25 Constitution;

26 (3) Congress's powers to raise and support armies and
27 to provide and maintain a navy; or

1 (4) any other congressional power that the United
2 States Supreme Court recognizes as a ground for abrogating a
3 state's sovereign immunity.

4 Sec. 171A.402. APPLICABILITY OF IMMUNITY. Notwithstanding
5 any other law, the immunities conferred by Section 171A.401 apply
6 in every court, both state and federal, and in every type of
7 adjudicative proceeding.

8 Sec. 171A.403. CONSTRUCTION OF CHAPTER RELATED TO ASSERTED
9 DEFENSE. This chapter may not be construed to prevent a litigant
10 from asserting the invalidity or unconstitutionality of a
11 provision or application of this chapter as a defense to an action,
12 claim, or counterclaim brought against the litigant.

13 Sec. 171A.404. WAIVER OF IMMUNITY. (a) Notwithstanding any
14 other law, a provision of the laws of this state may not be
15 construed to waive or abrogate an immunity conferred by Section
16 171A.401 unless it expressly waives or abrogates immunity with
17 specific reference to that section.

18 (b) Notwithstanding any other law, an attorney representing
19 the state, a political subdivision of this state, or an officer or
20 employee of this state or a political subdivision of this state
21 may not waive an immunity conferred by Section 171A.401 or take an
22 action that would result in a waiver of that immunity. A purported
23 waiver or action described by this subsection is considered void
24 and an ultra vires act.

25 Sec. 171A.405. JURISDICTION. Notwithstanding any other law,
26 including Chapter 37, Civil Practice and Remedies Code, a court of
27 this state does not have jurisdiction to consider and may not award

1 relief under any action, claim, or counterclaim that:

2 (1) seeks declaratory or injunctive relief, or any type
3 of writ, including a writ of prohibition, that would pronounce any
4 provision or application of this chapter invalid or
5 unconstitutional; or

6 (2) would restrain a person, including this state, a
7 political subdivision of this state, or an officer, employee, or
8 agent of this state or a political subdivision of this state, from:

9 (A) enforcing any provision or application of this
10 chapter; or

11 (B) filing, hearing, adjudicating, or docketing an
12 action brought under Section 171A.101 or 171A.151.

13 Sec. 171A.406. EFFECT OF CONTRARY JUDICIAL ACTIONS. (a)
14 Notwithstanding any other law, judicial relief issued by a court
15 of this state that disregards the immunity conferred by Section
16 171A.401 or the limits on jurisdiction or permissible relief
17 described by Section 171A.405:

18 (1) is considered void because a court without
19 jurisdiction issued the relief; and

20 (2) may not be enforced or obeyed by an officer,
21 employee, or agent, including a judicial official, of this state
22 or a political subdivision of this state.

23 (b) Notwithstanding any other law, a writ, injunction, or
24 declaratory judgment issued by a court of this state that purports
25 to restrain a person, including this state, a political subdivision
26 of this state, or an officer or employee of this state or a
27 political subdivision of this state, from hearing, adjudicating,

1 docketing, or filing an action brought under Section 171A.101 or
2 171A.151:

3 (1) is considered void and a violation of the Due
4 Process Clause of the Fourteenth Amendment to the United States
5 Constitution; and

6 (2) may not be enforced or obeyed by an officer,
7 employee, or agent, including a judicial official, of this state
8 or a political subdivision of this state.

9 Sec. 171A.407. LIABILITY FOR VIOLATION. (a)

10 Notwithstanding any other law, a person may bring an action against
11 an officer, employee, or agent, including a judicial official, of
12 this state or a political subdivision of this state, who issues,
13 enforces, or obeys a writ, injunction, or declaratory judgment
14 described by Section 171A.406(b) if the writ, injunction, or
15 judgment prevents or delays the person from bringing an action
16 under Section 171A.101 or 171A.151.

17 (b) A claimant who prevails in an action brought under this
18 section is entitled to:

19 (1) injunctive relief;

20 (2) compensatory damages;

21 (3) exemplary damages of not less than \$100,000; and

22 (4) costs and reasonable attorney's fees.

23 (c) Notwithstanding any other law, in an action brought
24 under this section, a person who violates Section 171A.405 or
25 171A.406(b):

26 (1) may not assert and is not entitled to any type of
27 immunity defense, including sovereign immunity, governmental

1 immunity, official immunity, or judicial immunity;

2 (2) may not be indemnified for an award of damages or
3 costs and attorney's fees entered against the person or for the
4 costs of the person's legal defense; and

5 (3) may not receive or obtain legal representation from
6 the attorney general.

7 SECTION 3. Section 27.010(a), Civil Practice and Remedies
8 Code, is amended to read as follows:

9 (a) This chapter does not apply to:

10 (1) an enforcement action that is brought in the name
11 of this state or a political subdivision of this state by the
12 attorney general, a district attorney, a criminal district
13 attorney, or a county attorney;

14 (2) a legal action brought against a person primarily
15 engaged in the business of selling or leasing goods or services,
16 if the statement or conduct arises out of the sale or lease of
17 goods, services, or an insurance product, insurance services, or
18 a commercial transaction in which the intended audience is an
19 actual or potential buyer or customer;

20 (3) a legal action seeking recovery for bodily injury,
21 wrongful death, or survival or to statements made regarding that
22 legal action;

23 (4) a legal action brought under the Insurance Code or
24 arising out of an insurance contract;

25 (5) a legal action arising from an officer-director,
26 employee-employer, or independent contractor relationship that:

27 (A) seeks recovery for misappropriation of trade

1 secrets or corporate opportunities; or

2 (B) seeks to enforce a non-disparagement agreement
3 or a covenant not to compete;

4 (6) a legal action filed under Title 1, 2, 4, or 5,
5 Family Code, or an application for a protective order under
6 Subchapter A, Chapter 7B, Code of Criminal Procedure;

7 (7) a legal action brought under Chapter 17, Business
8 & Commerce Code, other than an action governed by Section 17.49(a)
9 of that chapter;

10 (8) a legal action in which a moving party raises a
11 defense pursuant to Section 160.010, Occupations Code, Section
12 161.033, Health and Safety Code, or the Health Care Quality
13 Improvement Act of 1986 (42 U.S.C. 11101 et seq.);

14 (9) an eviction suit brought under Chapter 24, Property
15 Code;

16 (10) a disciplinary action or disciplinary proceeding
17 brought under Chapter 81, Government Code, or the Texas Rules of
18 Disciplinary Procedure;

19 (11) a legal action brought under Chapter 554,
20 Government Code;

21 (12) a legal action based on a common law fraud claim;
22 [~~or~~]

23 (13) a legal malpractice claim brought by a client or
24 former client;

25 (14) an action brought under Chapter 170, 170A, 171, or
26 171A, Health and Safety Code, or a petition for the taking of a
27 deposition under Rule 202, Texas Rules of Civil Procedure, to

1 investigate a potential claim or in anticipation of an action under
2 those chapters; or

3 (15) an action brought under Section 30.022.

4 SECTION 4. Chapter 110, Civil Practice and Remedies Code, is
5 amended by adding Section 110.013 to read as follows:

6 Sec. 110.013. LAWS REGULATING OR RESTRICTING ABORTION NOT
7 AFFECTED. Nothing in this chapter may be construed to limit the
8 scope or enforcement of Chapter 170, 170A, 171, or 171A, Health
9 and Safety Code, or Chapter 6-1/2, Title 71, Revised Statutes, or
10 any other law that regulates or restricts abortion or that
11 withholds taxpayer funds from entities that perform or promote
12 abortions.

13 SECTION 5. Subchapter H, Chapter 171, Health and Safety
14 Code, is amended by adding Section 171.2105 to read as follows:

15 Sec. 171.2105. JURISDICTION. Notwithstanding any other law,
16 including Chapter 37, Civil Practice and Remedies Code, a court of
17 this state does not have jurisdiction to consider and may not award
18 relief under any action, claim, or counterclaim that seeks
19 declaratory or injunctive relief, or any type of writ, including
20 a writ of prohibition, that would pronounce any provision or
21 application of this subchapter invalid or unconstitutional.

22 SECTION 6. Chapter 171A, Health and Safety Code, as added by
23 this Act, applies only to a cause of action that accrues on or
24 after the effective date of this Act.

25 SECTION 7. Section 71.02(a), Penal Code, as reenacted and
26 amended by this Act, applies only to an offense committed on or
27 after the effective date of this Act. An offense committed before

1 the effective date of this Act is governed by the law in effect on
2 the date the offense was committed, and the former law is continued
3 in effect for that purpose. For purposes of this section, an
4 offense was committed before the effective date of this Act if any
5 element of the offense occurred before that date.

6 SECTION 8. It is the intent of the legislature that every
7 provision, section, subsection, sentence, clause, phrase, or word
8 in this Act, and every application of the provisions in this Act
9 to every person, group of persons, or circumstances, is severable
10 from each other. If any application of any provision in this Act
11 to any person, group of persons, or circumstances is found by a
12 court to be invalid for any reason, the remaining applications of
13 that provision to all other persons and circumstances shall be
14 severed and may not be affected.

15 SECTION 9. This Act takes effect on the 91st day after the
16 last day of the legislative session.