

All Published Pre-filed Amendments for HB 7

Leach

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HOUSE OF REPRESENTATIVES

FLOOR AMENDMENT NO. _____

BY: Leach

1 Amend C.S.H.B. No. 7 (house committee printing) by striking
2 all below the enacting clause and substituting the following:

3 SECTION 1. This Act shall be known as the Woman and Child
4 Protection Act.

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

7 CHAPTER 171A. ABORTION-INDUCING DRUGS

8 SUBCHAPTER A. GENERAL PROVISIONS

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

10 (1) "Abortion" has the meaning assigned by Section
11 245.002.

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

14 (3) "Delivery network company," "delivery person,"
15 "digital network," "digitally prearranged delivery," "digitally
16 prearranged ride," "driver," and "transportation network company"
17 have the meanings assigned by Section 2402.001, Occupations Code.

18 (4) "Health care facility" has the meaning assigned by
19 Section 108.002, except the term does not include a hospital.

20 (5) "Health care provider" means an individual who is
21 licensed, certified, or otherwise authorized by this state to
22 diagnose, prevent, alleviate, or cure a human illness or injury.
23 The term does not include a physician.

24 (6) "Hospital" means:

25 (A) a hospital licensed under Chapter 241 or 577;
26 or

27 (B) a hospital owned, maintained, or operated by
28 this state.

29 (7) "Medical emergency" means a condition described by

1 Section 170A.002(b)(2).

2 (8) "Physician" means an individual licensed to
3 practice medicine in this state, including a medical doctor and a
4 doctor of osteopathic medicine.

5 (9) "Physician group" means an entity, including an
6 entity described in the definition of "physician" under Section
7 74.001, Civil Practice and Remedies Code, that is formed by a
8 physician or group of physicians to provide medical services.

9 Sec. 171A.002. APPLICABILITY AND CONSTRUCTION OF CHAPTER.

10 (a) This chapter does not apply to and a civil action under this
11 chapter may not be brought against:

12 (1) a hospital;

13 (2) a health care facility licensed, owned,
14 maintained, or operated by this state;

15 (3) a health care provider, other than a provider
16 against whom a qui tam action may be brought in accordance with
17 Section 171A.101(d)(8);

18 (4) a physician, other than a physician against whom a
19 qui tam action may be brought in accordance with Section
20 171A.101(d)(8);

21 (5) a physician group;

22 (6) an Internet service provider or the provider's
23 affiliates or subsidiaries;

24 (7) an Internet search engine;

25 (8) a cloud service provider solely providing access
26 or connection to or from an Internet website or other information or
27 content on the Internet or on a facility, system, or network that is
28 not under the provider's control, including transmission,
29 downloading, intermediate storage, access software, or other
30 services; or

31 (9) a person who manufactures, distributes, mails,

1 transports, delivers, prescribes, provides, or possesses
2 abortion-inducing drugs in this state solely for one or more of the
3 following purposes:

4 (A) treating a medical emergency;

5 (B) removing an ectopic pregnancy;

6 (C) removing a dead, unborn child whose death was
7 caused by spontaneous abortion; or

8 (D) a purpose that does not include performing,
9 inducing, attempting, or assisting an abortion, other than an
10 abortion performed in response to a medical emergency.

11 (b) This chapter may not be construed to require the actual
12 performance, inducement, or attempted performance of an abortion in
13 order for a person to bring a civil action authorized by this
14 chapter.

15 SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

16 Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING
17 DRUGS. (a) Except as provided by Subsection (b) or Section
18 171A.002, a person may not:

19 (1) manufacture or distribute an abortion-inducing
20 drug in this state; or

21 (2) mail, transport, deliver, prescribe, or provide an
22 abortion-inducing drug in any manner to or from any person or
23 location in this state.

24 (b) Subsection (a) does not prohibit:

25 (1) speech or conduct protected by the First Amendment
26 to the United States Constitution, as made applicable to the states
27 through the United States Supreme Court's interpretation of the
28 Fourteenth Amendment to the United States Constitution, or
29 protected by Section 8, Article I, Texas Constitution;

30 (2) conduct a pregnant woman takes in the course of
31 aborting or attempting to abort the woman's unborn child;

1 (3) the manufacture, distribution, mailing,
2 transport, delivery, prescribing, provision, or possession of an
3 abortion-inducing drug solely for one or more of the purposes
4 described by Section 171A.002(a)(9); or

5 (4) conduct a person takes under the direction of a
6 federal agency, contractor, or employee to carry out a duty under
7 federal law, if prohibiting that conduct would violate the doctrine
8 of preemption or intergovernmental immunity.

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

10 (a) This subchapter may be enforced only through a qui tam action
11 brought under Subchapter C.

12 (b) No other direct or indirect enforcement of this
13 subchapter may be taken or threatened by this state, a political
14 subdivision of this state, a district or county attorney, or any
15 officer or employee of this state or a political subdivision of this
16 state against any person, by any means whatsoever, except as
17 provided in Subchapter C.

18 (c) This section does not preclude or limit the enforcement
19 of any other law or regulation against conduct that is
20 independently prohibited by the other law or regulation and that
21 would remain prohibited by the other law or regulation in the
22 absence of this subchapter.

23 SUBCHAPTER C. QUI TAM ENFORCEMENT OF PROHIBITIONS RELATING TO
24 ABORTION-INDUCING DRUGS

25 Sec. 171A.101. QUI TAM ACTION AUTHORIZED. (a) A person,
26 other than this state, a political subdivision of this state, or an
27 officer or employee of this state or a political subdivision of this
28 state, has standing to bring and may bring a qui tam action against
29 a person who:

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

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

1 (b) An action brought under this section must be brought in
2 the name of the qui tam relator, who is an assignee of this state's
3 claim for relief. Notwithstanding any other law, the transfer of
4 this state's claim to the qui tam relator is absolute, with the
5 state retaining no interest in the subject matter of the claim.

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

8 (d) A qui tam action may not be brought under this section:

9 (1) against a woman for using, obtaining, or seeking
10 to obtain abortion-inducing drugs to abort or attempt to abort her
11 unborn child;

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

16 (3) by any person who:

17 (A) impregnated a woman through conduct
18 constituting sexual assault under Section 22.011, Penal Code, or
19 aggravated sexual assault under Section 22.021, Penal Code;

20 (B) committed an offense for which an affirmative
21 finding of family violence was made under Article 42.013, Code of
22 Criminal Procedure;

23 (C) provided an abortion-inducing drug to a
24 pregnant woman for the purpose of performing, inducing, or
25 attempting an abortion without the woman's consent or knowledge;

26 (D) has been convicted of an offense under
27 Section 42.072, Penal Code; or

28 (E) acts in concert or participation with a
29 person described by this subdivision;

30 (4) against a transportation network company or a
31 driver for using a transportation network company's digital network

1 to provide a digitally prearranged ride;

2 (5) against a delivery network company or a delivery
3 person for using a delivery network company's digital network to
4 provide a digitally prearranged delivery;

5 (6) against an air carrier conducting domestic or flag
6 operations under 14 C.F.R. Part 121 or a foreign air carrier
7 conducting scheduled operations under 14 C.F.R. Part 129;

8 (7) against a person to whom this chapter does not
9 apply and against whom a civil action under this chapter may not be
10 brought under Section 171A.002(a);

11 (8) against a health care provider or physician,
12 unless the qui tam relator pleads and proves that the provider or
13 physician engaged in conduct constituting a violation of Section
14 171A.051 while located outside this state; or

15 (9) against a pharmaceutical manufacturer,
16 pharmaceutical distributor, or common carrier, unless the qui tam
17 relator pleads and proves that the defendant failed to adopt and
18 implement a policy to not distribute, mail, transport, deliver,
19 provide, or possess abortion-inducing drugs other than for one or
20 more of the purposes described by Section 171A.002(a)(9).

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 not
25 certify a class in the action.

26 (f) In an action brought under this chapter, a qui tam
27 relator or a defendant against whom an action is brought under this
28 section may not, without the consent of the person to whom the
29 information belongs, publicly disclose or improperly obtain:

30 (1) any personally identifiable information of a
31 pregnant woman who sought or obtained an abortion-inducing drug

1 from a defendant against whom a qui tam action is brought under this
2 section, including any written, electronic, audio, or visual
3 document or media that identifies the pregnant woman;

4 (2) any information protected from public disclosure
5 under the Health Insurance Portability and Accountability Act of
6 1996 (Pub. L. No. 104-191) and regulations adopted under that Act;
7 or

8 (3) any personal data of a pregnant woman who sought or
9 obtained an abortion-inducing drug from a defendant against whom a
10 qui tam action is brought under this section that is protected from
11 public disclosure under federal or state law.

12 (g) Notwithstanding any other law, a court may not order in
13 response to the filing of a petition by a qui tam relator the taking
14 of a deposition under Rule 202, Texas Rules of Civil Procedure, of a
15 woman who is the subject of a violation of Section 171A.051 unless
16 the woman consents to the deposition.

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

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

21 (2) took reasonable precautions to ensure the
22 defendant would not violate Section 171A.051.

23 (b) It is an affirmative defense to an action brought under
24 Section 171A.101 that:

25 (1) the imposition of civil liability on the defendant
26 will violate the defendant's rights under federal law, including
27 the United States Constitution;

28 (2) the defendant:

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

1 (B) demonstrates that the imposition of civil
2 liability on the defendant will violate the third party's rights
3 under federal law, including the United States Constitution;

4 (3) the imposition of civil liability on the defendant
5 will violate the defendant's rights under the Texas Constitution;
6 or

7 (4) the imposition of civil liability on the defendant
8 will violate limits on extraterritorial jurisdiction imposed by the
9 United States Constitution or the Texas Constitution.

10 (c) The defendant has the burden of proving an affirmative
11 defense under this section by a preponderance of the evidence.

12 (d) The following are not defenses to an action brought
13 under Section 171A.101:

14 (1) a defendant's ignorance or mistake of law,
15 including a defendant's mistaken belief that the requirements or
16 provisions of this chapter are unconstitutional or were
17 unconstitutional;

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

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

26 (4) the laws of another state or jurisdiction,
27 including an abortion shield law, unless the Texas Constitution or
28 federal law compels the court to enforce that law;

29 (5) non-mutual issue preclusion or non-mutual claim
30 preclusion;

31 (6) sovereign immunity, governmental immunity, or

1 official immunity, other than sovereign immunity, governmental
2 immunity, or official immunity applicable to:

3 (A) a hospital owned, maintained, or operated by
4 this state that facilitates the availability of or makes available
5 abortion-inducing drugs solely for one or more of the purposes
6 described by Section 171A.002(a)(9);

7 (B) a political subdivision of this state,
8 including a hospital district, that facilitates the availability of
9 or makes available abortion-inducing drugs solely for one or more
10 of the purposes described by Section 171A.002(a)(9); or

11 (C) a physician or health care professional
12 employed by a hospital owned or operated by this state or a
13 political subdivision of this state, including a hospital district,
14 acting within the scope of the physician's or professional's
15 employment who prescribes, distributes, administers, or otherwise
16 makes available abortion-inducing drugs solely for one or more of
17 the purposes described by Section 171A.002(a)(9);

18 (7) a claim that the enforcement of this chapter or the
19 imposition of civil liability against the defendant will violate
20 the constitutional or federally protected rights of third parties,
21 except as provided by Subsection (b); or

22 (8) consent to the abortion by the claimant or the
23 unborn child's mother.

24 Sec. 171A.103. STATUTE OF LIMITATIONS. A person may bring
25 an action under Section 171A.101 not later than the sixth
26 anniversary of the date the cause of action accrues.

27 Sec. 171A.104. REMEDIES. (a) Notwithstanding any other
28 law and except as provided by Subsection (b), if a qui tam relator
29 prevails in an action brought under Section 171A.101, the court
30 shall award to the relator:

31 (1) injunctive relief sufficient to prevent the

1 defendant from violating Section 171A.051;

2 (2) an amount of not less than \$100,000 for each
3 violation of Section 171A.051, to be allocated in accordance with
4 Subsection (b); and

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

6 (b) In awarding the amount described by Subsection (a)(2),
7 the court shall ensure that:

8 (1) the qui tam relator receives the entire amount
9 awarded under Subsection (a)(2) for an action in which the relator
10 is:

11 (A) a woman who was pregnant at the time the woman
12 obtained or received an abortion-inducing drug that was
13 manufactured, distributed, mailed, transported, delivered,
14 prescribed, provided, or possessed in violation of Section
15 171A.051; or

16 (B) the father, sibling, or grandparent of the
17 unborn child with which the woman described by Paragraph (A) was
18 pregnant at the time the woman obtained or received the
19 abortion-inducing drug; and

20 (2) for an action in which the qui tam relator is a
21 person other than a person described by Subdivision (1):

22 (A) the relator receives \$10,000 of the total
23 amount awarded under Subsection (a)(2); and

24 (B) the remainder of the amount awarded under
25 Subsection (a)(2) is held in trust by the relator for the benefit of
26 a charitable organization designated by the relator, except that
27 the relator may not designate a charitable organization under this
28 paragraph from which the relator or any of the relator's family
29 members receives a salary, stipend, or any type of remuneration or
30 financial benefit.

31 (c) A court may not award relief under Subsection (a)(2) or

1 (3) in response to a violation of Section 171A.051 if the defendant
2 demonstrates that:

3 (1) a court previously ordered the defendant to pay an
4 amount under Subsection (a)(2) in another action for that
5 particular violation; and

6 (2) the court order described by Subdivision (1) has
7 not been vacated, reversed, or overturned.

8 (d) A court may not award costs or attorney's fees under the
9 Texas Rules of Civil Procedure or any other rule adopted by the
10 supreme court under Section 22.004, Government Code, to a defendant
11 against whom an action is brought under Section 171A.101.

12 (e) Subsection (d) does not preclude a court from:

13 (1) awarding sanctions under Chapter 10, Civil
14 Practice and Remedies Code; or

15 (2) sanctioning a litigant or attorney for frivolous,
16 malicious, or bad-faith conduct.

17 Sec. 171A.105. COORDINATED ENFORCEMENT PROHIBITED. (a)
18 This state, a political subdivision of this state, or an officer or
19 employee of this state or a political subdivision of this state may
20 not:

21 (1) act in concert or participation with a qui tam
22 relator bringing an action under Section 171A.101;

23 (2) establish or attempt to establish any type of
24 agency or fiduciary relationship with a qui tam relator bringing an
25 action under Section 171A.101;

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

29 (4) intervene in an action brought under Section
30 171A.101.

31 (b) This section does not prohibit this state, a political

1 subdivision of this state, or an officer or employee of this state
2 or a political subdivision of this state from filing an amicus
3 curiae brief in an action brought under Section 171A.101 if this
4 state, the political subdivision, the officer, or the employee does
5 not act in concert or participation with the qui tam relator.

6 Sec. 171A.106. JURISDICTION; APPLICABILITY OF STATE LAW.

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

13 (b) Notwithstanding any other law, the law of this state
14 applies to an action brought under Section 171A.101 to the maximum
15 extent permitted by the Texas Constitution and federal law,
16 including the United States Constitution.

17 (c) Notwithstanding any other law, any contractual
18 provision that requires or purports to require application of the
19 laws of a different jurisdiction, or that requires or purports to
20 require a qui tam action under Section 171A.101 to be litigated in a
21 particular forum, is void based on this state's public policy and is
22 not enforceable in any court.

23 (d) Notwithstanding any other law, Chapter 27, Civil
24 Practice and Remedies Code, does not apply to an action brought
25 under Section 171A.101.

26 Sec. 171A.107. APPEALS. The Fifteenth Court of Appeals has
27 exclusive intermediate appellate jurisdiction over any appeal or
28 original proceeding arising out of an action brought under Section
29 171A.101 in the courts of this state.

30 Sec. 171A.108. APPLICATION OF OTHER LAW. Notwithstanding
31 any other law, a court may not apply the law of another state or

1 jurisdiction to any qui tam action brought under Section 171A.101
2 unless the Texas Constitution or federal law compels the court to
3 apply that law.

4 SUBCHAPTER D. PROTECTION FROM CERTAIN COUNTERACTIONS

5 Sec. 171A.151. EFFECT OF CLAWBACK PROVISIONS. (a) For
6 purposes of this section, the term "clawback provision" refers to
7 any law of another state or jurisdiction that authorizes the
8 bringing of a civil action against a person for:

9 (1) bringing or engaging in an action authorized by
10 this chapter, including Subsection (f);

11 (2) bringing or engaging in an action that alleges a
12 violation of Section 171A.051;

13 (3) attempting, intending, or threatening to bring or
14 engage in an action described by Subdivision (1) or (2); or

15 (4) providing legal representation or any type of
16 assistance to a person who brings or engages in an action described
17 by Subdivision (1) or (2).

18 (b) Notwithstanding any other law and except as otherwise
19 provided by federal law or the Texas Constitution, the laws of this
20 state apply to:

21 (1) conduct described by Subsection (a);

22 (2) an action brought against a person for engaging in
23 conduct described by Subsection (a);

24 (3) an action brought under a clawback provision
25 against a resident of this state; and

26 (4) an action brought under Subsection (f).

27 (c) Notwithstanding any other law, in an action described by
28 Subsection (a)(1) or (2), the court shall, on request, issue a
29 temporary, preliminary, or permanent injunction that restrains
30 each defendant in the action, each person in privity with the
31 defendant, and each person with whom the defendant is in active

1 concert or participation from:

2 (1) bringing an action under any clawback provision
3 against a claimant or prosecutor, a person in privity with the
4 claimant or prosecutor, or a person providing legal representation
5 or any type of assistance to the claimant or prosecutor; and

6 (2) continuing to litigate an action under any
7 clawback provision that has been brought against a claimant or
8 prosecutor, a person in privity with the claimant or prosecutor, or
9 a person providing legal representation or any type of assistance
10 to the claimant or prosecutor.

11 (d) Notwithstanding any other law, the doctrines of res
12 judicata and collateral estoppel preclude a defendant against whom
13 a judgment is entered in an action described by Subsection (a)(1) or
14 (2) and each person in privity with the defendant from litigating or
15 relitigating any claim or issue under any clawback provision
16 against a claimant, prosecutor, or person in privity with the
17 claimant or prosecutor that was raised or could have been raised as
18 a claim, cross-claim, counterclaim, or affirmative defense under
19 the federal or this state's rules of civil procedure.

20 (e) Notwithstanding any other law, a court of this state may
21 not enforce an out-of-state judgment obtained in an action brought
22 under a clawback provision unless federal law or the Texas
23 Constitution requires the court to enforce the judgment.

24 (f) Notwithstanding any other law, if an action is brought
25 or judgment is entered against a person under a clawback provision
26 based wholly or partly on the person's decision to engage in conduct
27 described by Subsection (a), that person is entitled to injunctive
28 relief and damages from any person who brought the action or
29 obtained the judgment or who sought to enforce the judgment.
30 Notwithstanding any other law, the relief described by this
31 subsection must include:

1 (1) compensatory damages, including money damages in
2 an amount equal to the judgment damages and costs, expenses, and
3 reasonable attorney's fees spent in defending the action;

4 (2) costs, expenses, and reasonable attorney's fees
5 incurred in bringing an action under this subsection;

6 (3) additional amounts consisting of the greater of:

7 (A) twice the sum of the damages, costs,
8 expenses, and fees described by Subdivisions (1) and (2); or

9 (B) \$100,000; and

10 (4) injunctive relief that restrains each person who
11 brought the action under the clawback provision, each person in
12 privity with the person, and each person acting in concert or
13 participation with the person from:

14 (A) bringing further actions under any clawback
15 provision against the person against whom the action was brought,
16 each person in privity with the person, or any person providing
17 legal representation or any type of assistance to the person;

18 (B) continuing to litigate any actions brought
19 under a clawback provision against the persons described by
20 Paragraph (A); and

21 (C) enforcing or attempting to enforce any
22 judgment obtained in any actions brought under a clawback provision
23 against the persons described by Paragraph (A).

24 (g) It is not a defense to an action brought under
25 Subsection (f) that:

26 (1) the claimant failed to seek recovery under
27 Subsection (f) in an action brought against the claimant under a
28 clawback provision; or

29 (2) a court in a preceding action brought against the
30 claimant declined to recognize or enforce Subsection (f) or held
31 any provision of that subsection invalid, unconstitutional, or

1 preempted by federal law, notwithstanding the doctrines of issue or
2 claim preclusion.

3 (h) Notwithstanding any other law, Chapter 27, Civil
4 Practice and Remedies Code, does not apply to an action brought
5 under Subsection (f).

6 (i) The Fifteenth Court of Appeals has exclusive
7 intermediate appellate jurisdiction over any appeal or original
8 proceeding arising out of a civil action brought under Subsection
9 (f) in the courts of this state.

10 SECTION 3. Chapter 171A, Health and Safety Code, as added by
11 this Act, applies only to a cause of action that accrues on or after
12 the effective date of this Act.

13 SECTION 4. It is the intent of the legislature that every
14 provision, section, subsection, sentence, clause, phrase, or word
15 in this Act, and every application of the provisions in this Act to
16 every person, group of persons, or circumstances, is severable from
17 each other. If any application of any provision in this Act to any
18 person, group of persons, or circumstances is found by a court to be
19 invalid for any reason, the remaining applications of that
20 provision to all other persons and circumstances shall be severed
21 and may not be affected.

22 SECTION 5. This Act takes effect on the 91st day after the
23 last day of the legislative session.