

BILL ANALYSIS

Senate Research Center

S.B. 7
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2021, the 87th Legislature passed S.B. 8, the Heartbeat Bill, and H.B. 1280, the Trigger Bill. This legislation continues to save thousands of lives of Texas children. However, abortion pill providers have continued to send abortion pills into our state, creating a new avenue for illegal abortions.

S.B. 7 would increase tools citizens may use against those trafficking abortion pills. S.B. 7 would allow for qui tam actions against those mailing, transporting, delivering, prescribing, or providing abortion pills. The qui tam action can be brought by any person, besides an officer or employee of this state or a political subdivision of this state.

S.B. 7 lays out exceptions to liability including exceptions for medical emergencies and other lawful uses.

An action must be brought not later than the sixth anniversary of the date the cause of action accrues.

As proposed, S.B. 7 amends current law relating to abortion, including civil liability for the manufacture and provision of abortion-inducing drugs, exemptions from the Texas Citizens Participation Act and Religious Freedom Restoration Act, authorizing civil and qui tam actions, amendments to the fee-shifting statute governing abortion litigation, immunity defenses and limits on state-court jurisdiction and relief, the parens patriae standing of the attorney general, and the jurisdiction of the Fifteenth Court of Appeals, and provides for severability.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as the Woman and Child Protection Act.

SECTION 2. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 171A, as follows:

**CHAPTER 171A. ABORTION-INDUCING DRUGS AND FACILITATION OF ABORTION;
ENFORCEMENT OF ABORTION LAWS**

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 171A.001. DEFINITIONS. Defines "abortion," "abortion-inducing drug," and "medical emergency."

Sec. 171A.002. CONSTRUCTION OF CHAPTER RELATED TO LIABILITY. (a) Prohibits this chapter, notwithstanding any other law, from being construed to impose liability on the speech or conduct of certain entities.

(b) Prohibits this chapter, notwithstanding any other law, from being construed to impose liability on any action taken to manufacture, distribute, mail, transport, deliver, prescribe, provide, or possess an abortion-inducing drug or other medication solely for one or more of the following purposes: treating a medical emergency; removing an ectopic pregnancy; removing a dead, unborn child whose death was caused by spontaneous abortion; or a purpose that does not include performing, inducing, attempting, or assisting an abortion.

(c) Prohibits this chapter, notwithstanding any other law, from being construed to impose liability on any person who manufactures, distributes, mails, transports, delivers, prescribes, provides, or possesses abortion-inducing drugs solely for one or more of the following purposes: treating a medical emergency; removing an ectopic pregnancy; removing a dead, unborn child whose death was caused by spontaneous abortion; or a purpose that does not include performing, inducing, attempting, or assisting an abortion.

(d) Provides that, notwithstanding any other law, a court of this state does not have jurisdiction to consider a claim, cross-claim, or counterclaim under this chapter that seeks to impose liability on any of the persons or actions described in Subsections (a), (b), and (c).

(e) Authorizes a party to an action brought under this chapter, notwithstanding any other law, if it asserts a jurisdictional defense under Subsection (d), to take an interlocutory appeal of an order denying its plea to the jurisdiction.

(f) Requires the Fifteenth Court of Appeals, notwithstanding any other law, to have exclusive intermediate appellate jurisdiction over an interlocutory appeal brought under Subsection (e).

SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

Sec. 171A.051. PROHIBITIONS RELATED TO ABORTION-INDUCING DRUGS. (a) Prohibits a person, notwithstanding any other law and except as provided by Subsection (b), from manufacturing or distributing an abortion-inducing drug in this state or mailing, transporting, delivering, prescribing, or providing an abortion-inducing drug in any manner to or from any person or location in this state.

(b) Provides that, notwithstanding any other law, Subsection (a) does not prohibit certain speech or conduct.

Sec. 171A.052. EXCLUSIVE ENFORCEMENT; EFFECT OF OTHER LAW. (a) Provides that this subchapter, notwithstanding any other law, is authorized to be enforced only through a qui tam action brought under Subchapter C.

(b) Provides that no other direct or indirect enforcement of this subchapter is authorized to 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, except as provided in Subchapter C.

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

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

Sec. 171A.151. QUI TAM ACTION AUTHORIZED. (a) Provides that, notwithstanding any other law and except as provided by this section or by Section 171A.002, a person,

other than a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, has standing to bring and is authorized to bring a qui tam action against a person who violates Section 171A.051 or intends to violate Section 171A.051.

(b) Requires that an action brought under this section be brought in the name of the qui tam relator, who is required to be regarded as an assignee of the state's claim for relief. Provides that the transfer of the state's claim to the qui tam relator is absolute, with the state retaining no interest in the subject matter, notwithstanding any other law.

(c) Prohibits a qui tam relator from bringing an action under this section if the action is preempted by 47 U.S.C. Section 230(c).

(d) Prohibits a qui tam action, notwithstanding any other law, from being brought under this section against certain persons.

(e) Prohibits an action brought under this section, notwithstanding any other law, including rules of civil procedure adopted under Chapter 26 (Class Actions), Civil Practice and Remedies Code, from being litigated on behalf of a claimant class or a defendant class, and prohibits a court from certifying a class in the action.

Sec. 171A.152. DEFENSES. (a) Provides that it is an affirmative defense to an action brought under Section 171A.151 that the defendant was unaware the defendant was engaged in the conduct prohibited by Section 171A.051 and took reasonable precautions to ensure the defendant would not violate Section 171A.051.

(b) Provides that a defendant has the burden of proving an affirmative defense under Subsection (a) by a preponderance of the evidence.

(c) Provides that, notwithstanding any other law, certain claims are not a defense to an action brought under Section 171A.151.

Sec. 171A.153. STATUTE OF LIMITATIONS. Authorizes a person, notwithstanding any other law, to bring an action under Section 171A.151 not later than the sixth anniversary of the date the cause of action accrues.

Sec. 171A.154. REMEDIES. (a) Requires the court, notwithstanding any other law and except as provided by Subsection (b), if a qui tam relator prevails in an action brought under Section 171A.151, to award to the relator:

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

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

(3) costs and reasonable attorney's fees.

(b) Prohibits a court from awarding relief under Subsection (a)(2) or (3) in response to a violation of Section 171A.051 if the defendant demonstrates that a court previously ordered the defendant to pay damages under Subsection (a)(2) in another action for that particular violation, and that court order has not been vacated, reversed, or overturned.

(c) Prohibits a court, notwithstanding any other law, from awarding costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the Supreme Court of Texas under Section 22.004 (Rules of Civil Procedure), Government Code, to a defendant against whom an action is brought under Section 171A.151. Provides that this section does not preclude an award of

sanctions under Chapter 10 (Sanctions for Frivolous Pleadings and Motions), Civil Practice and Remedies Code, nor does it preclude a court from sanctioning a litigant or attorney for frivolous, malicious, or bad-faith conduct.

Sec. 171A.155. CONSTRUCTION OF SUBCHAPTER RELATED TO FIRST AMENDMENT PROTECTIONS. Prohibits this subchapter from being construed to impose liability on speech or conduct protected by the First Amendment to the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment to the United States Constitution, or protected by Section 8 (Freedom of Speech and Press; Libel), Article I (Bill of Rights), Texas Constitution.

Sec. 171A.156. COORDINATED ENFORCEMENT PROHIBITED. (a) Prohibits this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, notwithstanding any other law, from acting in concert or participation with a qui tam relator bringing an action under Section 171A.151, establishing or attempting to establish any type of agency or fiduciary relationship with a qui tam relator bringing an action under Section 171A.151, attempting to control or influence a person's decision to bring an action under Section 171A.151 or that person's conduct of the litigation, or intervening in an action brought under Section 171A.151.

(b) Provides that this section does not prohibit this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state from filing an amicus curiae brief in an action brought under Section 171A.151 if this state, the political subdivision, the officer, or the employee does not act in concert or participation with the qui tam relator.

Sec. 171A.157. JURISDICTION; APPLICABILITY OF STATE LAW. (a) Provides that, notwithstanding any other law, including Subchapter C (Long-Arm Jurisdiction in Suit on Business Transaction or Tort), Chapter 17 (Parties; Citation; Long-Arm Jurisdiction), Civil Practice and Remedies Code, the courts of this state have personal jurisdiction over a defendant sued under Section 171A.151 to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution and the defendant is authorized to be served outside this state.

(b) Provides that, notwithstanding any other law, the law of this state applies to an action brought under Section 171A.151 to the maximum extent permitted by the Texas Constitution and federal law, including the United States Constitution.

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

(d) Provides that, notwithstanding any other law, Chapters 27 (Actions Involving the Exercise of Certain Constitutional Rights) and 110 (Religious Freedom), Civil Practice and Remedies Code, do not apply to an action brought under Section 171A.151.

Sec. 171A.158. APPEALS. Requires the Fifteenth Court of Appeals, notwithstanding any other law, to have exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of an action brought under Section 171A.151 in the courts of this state.

SUBCHAPTER D. PROVISIONS GENERALLY APPLICABLE TO CIVIL LIABILITY FOR FACILITATING ABORTION

Sec. 171A.201. AFFIRMATIVE DEFENSE. (a) Authorizes a defendant against whom an action is brought under 171A.151 to assert an affirmative defense to liability under this section if certain criteria are met.

(b) Provides that the defendant has the burden of proving an affirmative defense described by Subsection (a) by a preponderance of the evidence.

Sec. 171A.202. CONSTRUCTION OF CHAPTER RELATED TO CIVIL LIABILITY AND ENFORCEMENT. Prohibits this chapter from being construed to limit or preclude a defendant from asserting the unconstitutionality of any provision or application of the laws of this state as a defense to liability under Section 171A.151 or from asserting any other defense that might be available under any other source of law.

Sec. 171A.203. APPLICATION OF OTHER LAW. (a) Prohibits a court, notwithstanding any other law, from applying the law of another state or jurisdiction to any qui tam action brought under Section 171A.151 unless the Texas Constitution or federal law compels it to do so.

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

Sec. 171A.204. VENUE. (a) Authorizes a qui tam action brought under Section 171A.151, notwithstanding any other law, including Chapter 15 (Venue), Civil Practice and Remedies Code, to be brought in certain counties.

(b) Prohibits an action, if a qui tam action is brought under Section 171A.151 in a venue described by Subsection (a), from being transferred to a different venue without the written consent of all parties.

(c) Provides that, notwithstanding any other law, any contractual choice-of-forum provision that requires or purports to require a qui tam action under Sections 171A.151 to be litigated in a particular forum is void based on this state's public policy and is not enforceable in any court.

Sec. 171A.205. PROTECTION FROM COUNTER ACTIONS. (a) Defines "clawback provision."

(b) Provides that, for the purposes of this section, the term "clawback provision" includes but is not limited to certain laws.

(c) Provides that, notwithstanding any other law, and except as otherwise required by federal law or the Texas Constitution, the law of this state applies to certain conduct and claims.

(d) Requires the court, notwithstanding any other law, in any action or criminal prosecution described in Subsection (a)(1) (relating to defining "clawback provision"), upon request, to issue a temporary, preliminary, or permanent injunction that restrains each of the defendants, their privities, and all persons in active concert or participation with them, from performing certain actions.

(e) Requires that a judgment entered in an action or criminal prosecution described in Subsection (a)(1), notwithstanding any other law, preclude the defendants and their privities, under the doctrines of res judicata and collateral estoppel, from litigating or relitigating any claim or issue under any clawback provision against the plaintiffs or their privities that was raised or that could have been raised under the federal or Texas rules of civil procedure or criminal procedure as a claim, cross-claim, counterclaim, set off, or affirmative defense.

(f) Prohibits the courts of this state, notwithstanding any other law, from enforcing an out-of-state judgment obtained under a clawback provision unless federal law or the Texas Constitution requires it to do so.

(g) Requires a person under a clawback provision based wholly or partly on the person's decision to engage in conduct described in Subsection (a), if an action is brought against the person or a judgment is entered against the person, notwithstanding any other law, to be entitled to injunctive relief and to recover damages from any person who brought the action or obtained the judgment or who has sought to enforce the judgment. Requires that the relief, notwithstanding any other law, include certain costs, expenses, and damages.

(h) Provides that, notwithstanding any other law, it is not a defense to an action brought under Subsection (g) that the claimant failed to seek recovery under Subsection (g) in an action brought against it under a clawback provision or a court in a previous action brought against the claimant declined to recognize or enforce Subsection (g), or held that any provisions of Subsection (g) are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

(i) Provides that, notwithstanding any other law, Chapter 27 (Actions Involving the Exercise of Certain Constitutional Rights), Civil Practice and Remedies Code, does not apply to an action brought under Subsection (g).

(j) Requires the Fifteenth Court of Appeals, notwithstanding any other law, to have exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of a civil action brought under Subsection (g) in the courts of this state.

SUBCHAPTER E. ENFORCEMENT OF ABORTION LAWS

Sec. 171A.251. DEFINITION. Defines "criminal abortion law."

Sec. 171A.252. ATTORNEY GENERAL ACTION FOR VIOLATION OF CERTAIN ABORTION LAWS. (a) Provides that the attorney general has parens patriae standing to bring an action under this section on behalf of unborn children of residents of this state.

(b) Authorizes the attorney general to bring an action for damages or injunctive relief on behalf of the unborn children of residents of this state against a person who violates or intends to violate certain laws.

(d) Prohibits the attorney general, notwithstanding any other law, from bringing an action under this section against a woman for aborting or attempting to abort her unborn child, or for using, obtaining, or seeking to obtain abortion-inducing drugs to abort or attempt to abort her unborn child.

SUBCHAPTER F. IMMUNITY AND LIMITS ON STATE-COURT JURISDICTION

Sec. 171A.301. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY. (a) Provides that, notwithstanding any other law, this state has sovereign immunity, a political subdivision of this state has governmental immunity, and an officer or employee of this state or a political subdivision of this state has official immunity, as well as sovereign or governmental immunity, as appropriate, in an action, claim, cross-claim, counterclaim, or any other type of legal or equitable action that meets certain criteria.

(b) Provides that the sovereign immunity described in or conferred by this section includes the constitutional sovereign immunity recognized by the United States Supreme Court 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 is prohibited from being abrogated by Congress or by a state or federal court except under congressional legislation authorized by certain laws and powers.

Sec. 171A.302. **APPLICABILITY OF IMMUNITY.** Provides that, notwithstanding any other law, the immunities described in or conferred by Section 171A.301 apply in every court, both state and federal, and in every type of adjudicative proceeding.

Sec. 171A.303. **CONSTRUCTION OF CHAPTER RELATED TO ASSERTED DEFENSE.** Prohibits this chapter from being construed to prevent a litigant from asserting the invalidity or unconstitutionality of a provision or application of this chapter as a defense to an action, claim, cross-claim, or counterclaim brought against the litigant.

Sec. 171A.304. **WAIVER OF IMMUNITY.** (a) Prohibits a provision of the laws of this state, notwithstanding any other law, from being construed to waive or abrogate an immunity described in or conferred by Section 171A.301 unless it expressly waives or abrogates immunity with specific reference to that section.

(b) Prohibits an attorney representing this state, a political subdivision of this state, or an officer or employee of this state or a political subdivision of this state, notwithstanding any other law, from waiving an immunity described in or conferred by Section 171A.301 or taking an action that would result in a waiver of that immunity. Provides that a purported waiver or action described by this subsection is considered void and an ultra vires act.

Sec. 171A.305. **JURISDICTION.** (a) Provides that a court of this state, notwithstanding any other law, including Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, does not have jurisdiction to consider and is prohibited from awarding relief under any action, claim, cross-claim, or counterclaim that seeks or would have certain results.

(b) Requires the Fifteenth Court of Appeals, notwithstanding any other law, to have exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of a civil action that seeks the relief described in Subsection (a).

SECTION 3. Amends Section 27.010(a), Civil Practice and Remedies Code, as follows:

(a) Provides that Chapter 27 does not apply to certain actions, including an action brought under certain provisions of the Health and Safety Code, or a petition for the taking of a deposition under Rule 202, Texas Rules of Civil Procedure, to investigate a potential claim or in anticipation of an action under those provisions or an action brought under Section 30.022 (Award of Attorney's Fees in Actions Challenging Abortion Laws), Civil Practice and Remedies Code. Makes nonsubstantive changes.

SECTION 4. Amends Chapter 110, Civil Practice and Remedies Code, by adding Section 110.013, as follows:

Sec. 110.013. **LAWS REGULATING OR RESTRICTING ABORTION NOT AFFECTED.** Provides that nothing in Chapter 110 (Religious Freedom) is authorized to be construed to limit the scope or enforcement of certain provisions of the Health and Safety Code or Chapter 6-1/2 (Abortion), Title 71 (Health--Public), V.T.C.S., or any other law that regulates or restricts abortion or that withholds taxpayer funds from entities that perform or promote abortions.

SECTION 5. Amends Subchapter H, Chapter 171, Health and Safety Code, by adding Section 171.2105, as follows:

Sec. 171.2105. **JURISDICTION.** Provides that a court of this state, notwithstanding any other law, including Chapter 37, Civil Practice and Remedies Code, does not have jurisdiction to consider and is prohibited from awarding relief under any action, claim, cross-claim, or counterclaim that seeks declaratory or injunctive relief, or any type of writ, including a writ of prohibition, that would pronounce any provision or application of Subchapter H (Detection of Fetal Heartbeat) invalid or unconstitutional.

SECTION 6. Amends Section 30.022, Civil Practice and Remedies Code, as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Provides that any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person, rather than any person in this state, from enforcing or bringing an action to enforce any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking such relief in any state or federal court, notwithstanding any other law, is jointly and severally liable to pay the costs and reasonable attorney's fees of the prevailing party, including the costs and reasonable attorney's fees that the prevailing party incurs in the party's efforts to recover costs and fees.

(b) Provides that a party is considered a prevailing party if, for the purposes of this section, a state or federal court dismisses any claim or cause of action brought against the party by a litigant that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; a state or federal court enters judgment in the party's favor on any such claim or cause of action; or the litigant that seeks the declaratory or injunctive relief described by Subsection (a) voluntarily dismisses or nonsuits its claims against the party under Rule 41, Federal Rules of Civil Procedure, Rule 162, Texas Rules of Civil Procedure, or any other procedural rule. Makes nonsubstantive changes.

(c) Provides that a prevailing party is authorized to recover costs and reasonable attorney's fees under this section only to the extent those costs and attorney's fees were incurred while defending claims or causes of action on which the party prevailed, or while attempting to recover those costs and attorney's fees.

(d) Redesignates existing Subsection (c) as Subsection (d) and makes no further changes.

(e) Redesignates existing Subsection (d) as Subsection (e). Provides that, notwithstanding any other law, certain actions are not defenses to an action brought under Subsection (c).

(f) Authorizes a civil action brought under Subsection (d) (relating to authorizing a prevailing party under this section to bring a civil action to recover costs and attorney's fees against a person), notwithstanding any other law, including Chapter 15 (Venue), Civil Practice and Remedies Code, to be brought in certain counties.

(g) Prohibits a civil action under Subsection (d), if the action is brought in a venue described by Subsection (f), from being transferred to a different venue without the written consent of all parties.

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

(i) Provides that Chapter 27, Civil Practice and Remedies Code, notwithstanding any other law, does not apply to an action brought under Subsection (d).

(j) Requires the Fifteenth Court of Appeals, notwithstanding any other law, to have exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of a civil action brought under Subsection (d) in the courts of this state.

SECTION 7. Makes application of Chapter 171A, Health and Safety Code, as added by this Act, prospective.

SECTION 8. Severability clause.

SECTION 9. Effective date: September 1, 2025.