

## **BILL ANALYSIS**

Senate Research Center

S.B. 31  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 31 maintains current prohibitions of elective abortions, including the private right of action. The bill conforms Texas abortion statutes to uniformly define the situation of when a medical emergency occurs by maintaining and clarifying protections against threats to the mother's life and threats to her major bodily functions.

S.B. 31 codifies that a physician, using reasonable medical judgment, may intervene and provide timely medical care to a pregnant woman in a defined medical emergency. The bill would also protect women undergoing treatment for cancer and other diseases when the treatment may jeopardize the unborn child.

As proposed, S.B. 31 amends current law relating to exceptions to otherwise prohibited abortions based on a physician's reasonable medical judgment.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Medical Board in SECTION 18 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Authorizes this Act to be cited as the Life of the Mother Act.

SECTION 2. Amends Section 74.551, Civil Practice and Remedies Code, as follows:

Sec. 74.551. APPLICATION. Provides that a civil action brought against a physician or health care provider for a violation of a provision of certain chapters of the Health and Safety Code, or Chapter 6-1/2 (Abortion), Title 71 (Health--Public), V.T.C.S., subject to an exception provided by the chapter alleged to have been violated or other law, is a health care liability claim and is subject to the same requirements as any other health care liability claim. Provides that this section does not affect a health care liability claim based on any other ground than a violation of certain chapters of the Health and Safety Code, or Chapter 6-1/2, Title 71, V.T.C.S. Deletes existing text providing that an action to which Section 74.552 (Affirmative Defense in Certain Actions Arising From Certain Pregnancy Complications) applies is a health care liability claims for purposes of Chapter 74 (Medical Liability) and is subject to the same requirements as any other health care liability claim.

SECTION 3. Amends Section 170A.002(b), Health and Safety Code, as follows:

(b) Provides that it is an exception to the application of Subsection (a) (relating to prohibiting a person from knowingly performing, inducing, or attempting an abortion) that:

(1) makes a nonsubstantive change to this subdivision; and

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a physical condition, rather

than a life-threatening physical condition, aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.

Deletes existing text providing that the prohibition under Subsection (a) does not apply if the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create a greater risk of the pregnant female's death or a serious risk of substantial impairment of a major bodily function of the pregnant female. Makes a nonsubstantive change.

SECTION 4. Amends Chapter 170A, Health and Safety Code, by adding new Sections 170A.0021, 170A.0022, and 170A.0023, as follows:

Sec. 170A.0021. TREATMENT AFFECTING UNBORN CHILD; EXCEPTION. (a) Requires a physician who treats a condition described by Subsection 170A.002(b)(2), notwithstanding any other law, to do so in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for survival of an unborn child.

(b) Provides that it is an exception to the application of Subsection (a) that, in a physician's reasonable medical judgment, the manner of treatment required by that subsection would create a greater risk of the pregnant female's death or substantial impairment of a major bodily function of the pregnant female.

(c) Provides that Chapter 170A (Performance of Abortion) does not require a physician to delay, alter or withhold medical treatment provided to a pregnant female if doing so would create a greater risk of the pregnant female's death or substantial impairment of a major bodily function of the pregnant female.

(d) Provides that nothing in Subsection (c) authorizes the performance of an abortion that is prohibited by law.

Sec. 170A.0022. REASONABLE MEDICAL JUDGMENT. Provides that reasonable medical judgment in providing medical treatment to a pregnant female includes removing an ectopic pregnancy as defined by Section 245.002(4-a) (relating to defining "ectopic pregnancy") and a dead, unborn child whose death was caused by spontaneous abortion.

Sec. 170A.0023. ACCIDENTAL OR UNINTENTIONAL DEATH. (a) Provides that this section applies to any law that provides an exception to an otherwise prohibited abortion based on a condition described by Section 170A.002(b)(2).

(b) Provides that it is an exception to the application of each law described by Subsection (a) that the death or injury of an unborn child resulted from treatment provided to a pregnant female based on a physician's reasonable medical judgment if the death of or injury to the unborn child was accidental or unintentional.

SECTION 5. Amends Section 171.002(3), Health and Safety Code, to redefine "medical emergency."

SECTION 6. Amends Section 171.046(a) and (b), Health and Safety Code, as follows:

(a) Provides that the prohibitions and requirements under certain provisions of the Health and Safety Code do not apply to an abortion performed if, in the physician's reasonable medical judgment, the abortion is necessary due to a medical emergency and necessitates, as applicable, certain actions. Deletes existing text providing that the prohibitions and requirements under certain provisions of the Health and Safety Code do not apply to an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's

death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable, certain actions.

(b) Prohibits a physician from taking an action authorized under Subsection (a) if the medical emergency, rather than risk of death or a substantial and irreversible physical impairment of a major bodily function, arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

SECTION 7. Amends Section 171.063(c), Health and Safety Code, as follows:

(c) Requires a physician, before the physician provides an abortion-inducing drug, to perform certain actions, including documenting, in the woman's medical record, the gestational age and location, rather than gestational age and intrauterine location, of the pregnancy to determine whether an ectopic pregnancy exists as defined by Section 245.002(4-a);

SECTION 8. Amends Subchapter H, Chapter 171, Health and Safety Code, by adding a new Section 171.2011, as follows:

Sec. 171.2011. APPLICABILITY. (a) Provides that Subchapter H (Detection of Fetal Heartbeat) applies only to an abortion that is otherwise prohibited by law and that is not subject to an exception provided by law.

(b) Provides that certain activities do not constitute aiding or abetting under this subchapter.

SECTION 9. Amends Section 245.002(4-a), Health and Safety Code, to redefine "ectopic pregnancy."

SECTION 10. Amends Section 245.016, Health and Safety Code, as follows:

Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT. Provides that it is an exception to the application of Section 245.014 (Criminal Penalty) that the abortion was performed in an unlicensed abortion facility due to a medical emergency described by Section 170A.002(b)(2). Provides that, in this section, the term "unlicensed abortion facility" does not include an individual or entity to which funds appropriated by the legislature in the general appropriations act are prohibited from being distributed. Deletes existing text providing that Chapter 245 (Abortion Facilities) does not remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed abortion facility if, at the commencement of the abortion, the physician reasonably believes that the abortion is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical health.

SECTION 11. Amends Section 164.052, Occupations Code, by adding a new Subsection (d) to prohibit Section 164.052 (Prohibited Practices by Physician or License Applicant) from being construed to prohibit, and to prohibit the Texas Medical Board (TMB) from taking action against a physician regarding, the performance of an abortion in response to a medical emergency described by Section 170A.002 (b)(2), Health and Safety Code.

SECTION 12. Amends Section 164.055, Occupations Code, by amending Subsection (c), to prohibit TMB, notwithstanding Subsection (a) (relating to requiring TMB to take an appropriate disciplinary action against a physician who violates certain provisions of the Health and Safety Code), from taking disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by Section 170A.002 (Prohibited Abortion; Exceptions), Health and Safety Code, rather than Section 74.552 (Affirmative Defense in Certain Actions Arising From Certain Pregnancy Complications), Civil Practice and Remedies Code.

SECTION 13. Amends Section 165.152, Occupations Code, by adding a new Subsection (e), to provide that it is an exception to the application of Subsection (a) (relating to providing that a person commits an offense if the person practices medicine in this state in violation of Subtitle B (Physicians)) if the person is a physician who performs, induces, or attempts an abortion due to a medical emergency described by Section 170A.002(b)(2), Health and Safety Code.

SECTION 14. Amends Article 4512.6, Chapter 6-1/2, Title 71, Vernon's Civil Statutes, as follows:

Art. 4512.6. New heading: EXCEPTION FOR MEDICAL EMERGENCY. (a) Creates this subsection from existing text. Provides that it is an exception to the application of this chapter that an abortion is procured, performed or attempted due to a medical emergency. Deletes existing text providing that nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

(b) Defines "medical emergency."

SECTION 15. Requires that the exceptions to otherwise prohibited abortions described by this Act be construed as consistent with the opinion of the Texas Supreme Court in *In re State*, 682 S.W.3d 890 (Tex. 2023), including with respect to providing that any threat posed by a female's pregnancy to her life or major bodily functions need not be imminent or irreversible and, except as provided by the change in law made by this Act to Section 170A.002(b)(2), Health and Safety Code, be construed as consistent with the opinion of the Texas Supreme Court in *State v. Zurawski*, 690 S.W.3d 644 (Tex. 2024), including with respect to the state's burden of proof in any enforcement action.

SECTION 16. Repealer: Section 74.552 (Affirmative Defense in Certain Actions Arising From Certain Pregnancy), Civil Practice and Remedies Code.

Repealer: Section 9.35 (Certain Medical Treatment Provided to Pregnant Woman), Penal Code.

Repealer: Section 170A.002(d) (relating to providing that medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section), Health and Safety Code.

SECTION 17. (a) Requires the State Bar of Texas (state bar), to increase the understanding of the legal profession regarding the laws regulating abortion following the changes in law made by this Act, to develop, or solicit the development of, and offer to attorneys licensed in this state a comprehensive program of continuing legal education regarding the regulation of abortion in this state, with a focus on the exceptions to otherwise prohibited abortions. Requires that the program include legal education regarding certain information.

(b) Requires that the program required by Subsection (a) be developed in cooperation with the Health Law Section of the state bar, physician and health care provider organizations, and other non-state bar stakeholders with a demonstrated interest and expertise in the required subject matter and be promoted by communications made by the state bar to all attorneys in this state, organizations representing physicians and health care providers whose members treat pregnant women, and health care institutions as defined by Section 74.001 (Definitions), Civil Practice and Remedies Codes.

(c) Requires that the course of instruction required by Subsection (a) be offered at no cost to attorneys licensed in this state and be offered on the Internet provided through the state bar in addition to any other method approved by the state bar.

(d) Requires that the program required by Subsection (a) be offered no later than January 1, 2026.

SECTION 18. (a) (1) Requires TMB, no later than January 1, 2026, to make available one or more approved courses regarding the laws relating to pregnancy-related medical emergencies as the term "medical emergency" is used in Title 2 (Health), Subtitle H (Public Health Provisions), Health and Safety Code.

(2) Authorizes TMB to solicit the development of a course required by Subsection (1) by organizations representing physicians, institutions of higher education with medical schools, or other providers of continuing education to physicians acceptable to TMB.

(3) Requires TMB, after approval of a continuing education course required by this subsection, to inform all licensed physicians in this state of the availability of the course and request organizations representing physicians in general and physicians who practice in specialties that treat pregnant women to make the availability of the course known to their members.

(b) Requires that completion of a course described by Subsection (a) be credited to the requirements for continuing medical education enforced by TMB.

(c) Requires that a course approved under Subsection (a) address certain subjects.

(d) Provides that continuing medical education described in whole or in part by Subsection (c) does not constitute aiding or abetting as those terms are used in Subchapter H, Chapter 171 (Abortion), Health and Safety Code.

(e)(1) Requires a physician licensed to practice medicine under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code, who provides obstetric care to complete no later than June 1, 2027, a course described by Subsection (a) that equals at least one hour of continuing medical education. Provides that this is a one-time requirement.

(2) Prohibits the license of a physician described by Subsection (1) from being renewed if the physician has not complied with that subsection.

(3) Requires TMB to adopt rules to implement this subsection.

(f) Requires TMB to make available at least one course required by this section at no cost to physicians licensed in this state and include on its Internet website a list of courses of continuing medical education approved under Subsection (a).

(g) Provides that nothing in Subsections (a) through (f) creates a cause of action or a standard of care, obligation or duty that provides the basis for a cause of action or affects a health care liability claim, as defined by Section 74.001(13) (relating to defining "health care liability claim"), Civil Practice and Remedies Code, based on any ground other than a violation of certain provisions of the Health and Safety Code, or Chapter 6-1/2, Title 71, V.T.C.S.

SECTION 19. Effective date: upon passage or September 1, 2025.