

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 is responsible, wholly or partly, for the creation or development

of information provided through the Internet or any other interactive computer service.

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

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

(B) a search engine; or

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

(7) "Medical emergency" has the meaning assigned by Section [171.002](#).

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

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

(2) a search engine; or

(3) a cloud service provider that solely provides access or connection to or from an Internet website or other

information or content on the Internet or on a facility, system, or network that is not under the provider's control, including transmission, downloading, intermediate storage, access software, or other services.

SUBCHAPTER B. PROTECTION FROM ABORTION-INDUCING DRUGS

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

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

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

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

(1) 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, Article I, Texas Constitution;

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

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

(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

1 assisting an abortion;

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

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

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

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

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

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

24 (c) This section does not preclude or limit the enforcement  
25 of any other law or regulation against conduct that is  
26 independently prohibited by the other law or regulation and that  
27 would remain prohibited by the other law or regulation in the

1 absence of this subchapter.

2 SUBCHAPTER C. CIVIL LIABILITY FOR DISTRIBUTION OF

3 ABORTION-INDUCING DRUGS

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

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

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

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

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

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

1 father was married to the unborn child's mother at the time of the  
2 unborn child's conception or death.

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

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

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

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

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

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

25 (1) was unaware the defendant was engaged in the  
26 conduct described by Section 171A.101(a); and

27 (2) took every reasonable precaution to ensure the

1 defendant would not manufacture, distribute, mail, prescribe, or  
2 provide or aid or abet the manufacture, distribution, mailing,  
3 prescription, or provision of abortion-inducing drugs.

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

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

8 (1) ignorance or mistake of law;

9 (2) a defendant's belief the requirements or  
10 provisions of this chapter are unconstitutional or were  
11 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, or  
15 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,  
20 agency rule or action, or treaty that has been repealed,  
21 superseded, or declared invalid or unconstitutional, even if the  
22 federal statute, agency rule or action, or treaty had not been  
23 repealed, superseded, or declared invalid or unconstitutional when  
24 the cause of action 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) the consent of the claimant or the unborn child's  
5 mother to the abortion;

6 (9) contributory or comparative negligence;

7 (10) assumption of risk;

8 (11) entrapment;

9 (12) lack of actual or proximate cause;

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) establish or attempt to establish any type of

agency or fiduciary relationship with a claimant bringing an action under Section 171A.101;

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

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

(b) 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.101 if the state, political subdivision, officer, or employee does not act in concert or participation with the claimant who brings the action.

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

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

(1) violates Section 171A.051; or

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

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

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

(d) Notwithstanding any other law, a qui tam action may not

be brought under this section:

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

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

(3) against a common carrier that:

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

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

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

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

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

(1) was unaware the defendant was engaged in the

1 conduct prohibited by Section 171A.051; and

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

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

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

8 (1) ignorance or mistake of law;

9 (2) a defendant's belief the requirements or  
10 provisions of this chapter are unconstitutional or were  
11 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, or  
15 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,  
20 agency rule or action, or treaty that has been repealed,  
21 superseded, or declared invalid or unconstitutional, even if the  
22 federal statute, agency rule or action, or treaty had not been  
23 repealed, superseded, or declared invalid or unconstitutional when  
24 the cause of action 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 interpretation  
9 of the Fourteenth Amendment to the United States Constitution, or  
10 protected by Section 8, Article I, Texas Constitution.

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

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

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

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

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

25        (b) This section does not prohibit a political subdivision  
26 of this state or an officer or employee of a political subdivision  
27 of this state from filing an amicus curiae brief in an action

1 brought under Section 171A.151 if the political subdivision,  
2 officer, or employee does not act in concert or participation with  
3 the qui tam relator.

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

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

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

15 (c) Notwithstanding any other law, any contractual  
16 choice-of-law provision that requires or purports to require  
17 application of the laws of a different jurisdiction is void based on  
18 this 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.151.

22 SUBCHAPTER E. PROVISIONS GENERALLY APPLICABLE TO CIVIL LIABILITY  
23 FOR FACILITATING ABORTION

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



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

4           (2) the defendant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) Notwithstanding any other law, any contractual  
27 choice-of-forum provision that requires or purports to require a

civil or qui tam action under Sections 171A.101 or 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.255. PROTECTION FROM COUNTER ACTIONS. If an action is brought against a person or a judgment is entered against a person based wholly or partly on the person's decision to bring or threat to bring an action under Section 171A.101 or 171A.151 the person may recover damages from the claimant who brought the action or obtained the judgment or who has sought to enforce the judgment.

The damages must include:

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

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

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

SUBCHAPTER F. PROVISIONS RELATING TO ENFORCEMENT OF ABORTION LAWS

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

Sec. 171A.352. ATTORNEY GENERAL ACTION FOR VIOLATION OF CERTAIN ABORTION LAWS. (a) The attorney general has parens patriae standing to bring a civil action under this section on behalf of unborn children of residents of this state.

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

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

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

23                (1) a state or federal court dismisses a claim or cause  
24 of action brought against the party by a litigant that seeks the  
25 declaratory or injunctive relief described by Subsection (a),  
26 regardless of the reason for the dismissal;

27                (2) a state or federal court enters judgment in the

1 party's favor on that claim or cause of action; or

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

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

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

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

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

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

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

25 (2) the court in the underlying action declined to  
26 recognize or enforce this section; or

27 (3) the court in the underlying action held that any

provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrine of issue or claim preclusion.

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

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

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

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

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

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

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

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

Sec. 171A.401. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY. (a) Notwithstanding any other law, the state has sovereign immunity, a political subdivision of this state has

1 governmental immunity, and an officer or employee of this state or a  
2 political subdivision of this state has official immunity in an  
3 action, claim, counterclaim, or any other type of legal or  
4 equitable action that:

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

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

11 (A) enforcing any provision or application of  
12 this chapter; or

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

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

20 (1) Section 5 of the Fourteenth Amendment, United  
21 States Constitution;

22 (2) the Bankruptcy Clause of Article I, United States  
23 Constitution;

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

26 (4) any other congressional power that the United  
27 States Supreme Court recognizes as a ground for abrogating a

1 state's sovereign immunity.

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

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

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

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

23 Sec. 171A.405. JURISDICTION. Notwithstanding any other  
24 law, including Chapter 37, Civil Practice and Remedies Code, a  
25 court of this state does not have jurisdiction to consider and may  
26 not award relief under any action, claim, or counterclaim that:

27 (1) seeks declaratory or injunctive relief, or any



1 type of writ, including a writ of prohibition, that would pronounce  
2 any provision or application of this chapter invalid or  
3 unconstitutional; or

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

7 (A) enforcing any provision or application of  
8 this chapter; or

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

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

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

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

21 (b) Notwithstanding any other law, a writ, injunction, or  
22 declaratory judgment issued by a court of this state that purports  
23 to restrain a person, including 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, from hearing, adjudicating,  
26 docketing, or filing an action brought under Section 171A.101 or  
27 171A.151:

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

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

7           Sec. 171A.407. LIABILITY FOR VIOLATION. (a)  
8 Notwithstanding any other law, a person may bring an action against  
9 an officer, employee, or agent, including a judicial official, of  
10 this state or a political subdivision of this state, who issues,  
11 enforces, or obeys a writ, injunction, or declaratory judgment  
12 described by Section 171A.406(b) if the writ, injunction, or  
13 judgment prevents or delays the person from bringing an action  
14 under Section 171A.101 or 171A.151.

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

17                   (1) injunctive relief;

18                   (2) compensatory damages;

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

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

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

24                   (1) may not assert and is not entitled to any type of  
25 immunity defense, including sovereign immunity, governmental  
26 immunity, official immunity, or judicial immunity;

27                   (2) may not be indemnified for an award of damages or

costs and attorney's fees entered against the person or for the costs of the person's legal defense; and

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

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

(a) This chapter does not apply to:

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

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

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

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

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

(A) seeks recovery for misappropriation of trade secrets or corporate opportunities; or

(B) seeks to enforce a non-disparagement

1 agreement or a covenant not to compete;

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

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

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

12 (9) an eviction suit brought under Chapter 24,  
13 Property Code;

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

17 (11) a legal action brought under Chapter 554,  
18 Government Code;

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

21 (13) a legal malpractice claim brought by a client or  
22 former client;

23 (14) an action brought under Chapter 170, 170A, 171,  
24 or 171A, Health and Safety Code, or a petition for the taking of a  
25 deposition under Rule 202, Texas Rules of Civil Procedure, to  
26 investigate a potential claim or in anticipation of an action under  
27 those chapters; or

1           (15) an action brought under Section 30.022.

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

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

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

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

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

22          SECTION 7. Section 71.02(a), Penal Code, as reenacted and  
23 amended by this Act, applies only to an offense committed on or  
24 after the effective date of this Act. An offense committed before  
25 the effective date of this Act is governed by the law in effect on  
26 the date the offense was committed, and the former law is continued  
27 in effect for that purpose. For purposes of this section, an

1 offense was committed before the effective date of this Act if any  
2 element of the offense occurred before that date.

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

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