

SUBJECT: Prohibiting manufacture and provision of abortion-inducing drugs

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 8 ayes — King, Darby, Geren, Guillen, Hull, McQueeney, Metcalf,
Smithee

4 nays — Hernandez, Anchía, Raymond, Turner

3 absent — Y. Davis, Phelan, Thompson

WITNESSES: For — Katlyn Marburger, Brenham & Bryan Pregnancy Center; Susan Chapel, Pregnancy Assistance Center North; Jana Pinson, Pregnancy Center of the Coastal Bend; Mark Lee Dickson, Right To Life Across Texas; Cindy Asmussen, Southern Baptists of Texas Convention; Samantha Furnace, Ashley Leenerts, Brittani Oglesbee, John Seago, Ashley Solano, Texas Right to Life; and 7 individuals (*Registered, but did not testify*: Chelsey Youman, Alliance Defending Freedom; Jack Finger, San Antonio Family Association; Cindi Castilla, Texas Eagle Forum; Lauren Pena, Travis County Republican Party; Michelle Evans, Williamson County Republican Party; Ashley Fordinal; Isabella Garcia; CJ Grisham; Perla Hopkins)

Against — Michael Olson, Catholic Diocese of Fort Worth, Texas Catholic Conference of Bishops; Shellie Hayes-McMahon, Planned Parenthood Texas Votes; Kyleen Wright, Texans for Life; Joe Pojman, Ph.D., Texas Alliance for Life; Heather De La Garza-Barone, Texas Hospital Association; Kyle Riley, Texas Impact; Dr. Debbie Fuller, Dr. Zeke Silva, Texas Medical Association; Kim Batchelor; Shelley Hall; Kaitlyn Kash; Lauren Miller (*Registered, but did not testify*: Blair Wallace, ACLU of Texas; Yaneth Flores, Raven Freeborn, Blake Rocap, Avow Texas; Miriam Laeky, Brad Pritchett, Equality Texas; Cathy Torres, Frontera Fund; Ana O’Quin, Girls Empowerment Network; Lucie Arvallo, HK Gray, Maude Sheperd, Jane’s Due Process; Morgan Walker, Lambda Legal; Erika Galindo, Lilith Fund; Anna Nguyen, PFLAG Austin; Grace Brooks, Darcy Caballero, Maria Lumbreras, Planned

Parenthood Texas Votes; Kamyon Conner, TEA Fund; Amber Jones, Texas AFL-CIO; Lisa Kaufman, Texas Civil Justice League; Veronikah Warms, Texas Civil Rights Project; Levi Fiedler, Texas Freedom Network; Keats Miles-Wallace, Texas Impact; Michelle Venegas-Matula, Texas Unitarian Universalist Justice Ministry; Landon Richie, Transgender Education Network of Texas; Anita Knight, TX Impact, AAUW; and 374 individuals)

On — Jeff Haas, Abolish Abortion Texas (*Registered, but did not testify*: Maureen Milligan, Teaching Hospitals of Texas)

BACKGROUND: 47 U.S.C. Section 230(c) establishes that no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider. No provider or user of an interactive computer service shall be held liable on account of:

- any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
- any action taken to enable or make available to information content providers or other the technical means to restrict access to such material.

Texas Civil Practice and Remedies Code ch. 27, related to actions involving the exercise of certain constitutional rights, has the stated purpose of encouraging and safeguarding the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

DIGEST: CSHB 7 would prohibit the manufacture and provision of abortion-inducing drugs. The bill would be cited as the Woman and Child

Protection Act.

Abortion-inducing drug prohibitions. CSHB 7 would prohibit a person from:

- manufacturing or distributing an abortion-inducing drug in Texas; or
- mailing, transporting, delivering, prescribing, or providing an abortion-inducing drug in any manner to or from any person or location in the state.

The bill would not prohibit:

- speech or conduct protected by the First Amendment;
- conduct a pregnant woman took in the course of aborting or attempting to abort her unborn child;
- the manufacture, distribution, mailing, transport, delivery, prescribing, provision, or possession of an abortion-inducing drug solely for one or more of the permitted purposes involving a medical emergency or certain other conditions; or
- conduct a person took under the direction of a federal agency, contractor, or employee to carry out a duty under federal law, if prohibiting that conduct would violate the doctrine of preemption or intergovernmental immunity.

Applicability and construction. The bill would not apply to, and a civil action under the bill could not be brought against:

- a hospital;
- a health care facility licensed, owned, maintained, or operated by this state;
- a health care provider, other than a provider against whom a qui tam action could be brought;
- a physician, other than a physician against whom a qui tam action could be brought;

- a physician group;
- an internet service provider or the provider's affiliates or subsidiaries;
- an internet search engine; or
- certain cloud service providers.

The bill also would not apply to, and a civil action could not be brought against, a person who manufactured, distributed, mailed, transported, delivered, prescribed, provided, or possessed abortion-inducing drugs in Texas solely for the purpose of treating a medical emergency, removing an ectopic pregnancy, removing a dead, unborn child whose death was caused by spontaneous abortion, or a purpose that did not include performing, inducing, attempting, or assisting an abortion, other than an abortion that was not a medical emergency.

The bill could not be construed to require the actual performance, inducement, or attempted performance of an abortion for a person to bring a civil action authorized by the bill.

Exclusive enforcement, effect of other law. The abortion-inducing drug prohibition established by the bill could only be enforced through a qui tam action. No other direct or indirect enforcement of the bill could be taken or threatened by the state, a political subdivision of the state, a district or county attorney, or any officer or employee of the state or a political subdivision against any person, by any means whatsoever.

The bill would not preclude or limit the enforcement of any other law or regulation against conduct that was independently prohibited by the other law or regulation and that would remain prohibited by the other law or regulation in the absence of the bill.

Qui tam action authorization. A person, other than the state, a political subdivision of the state, or an officer or employee of the state or a political subdivision, would have standing to bring and could bring a qui tam action against a person who violated or intended to violate the bill. An action brought under the bill would be required to be brought in the name

of the qui tam relator, who was an assignee of the state's claim for relief. The transfer of the state's claim to the qui tam relator would be absolute. A qui tam relator could not bring an action under the bill if the action was preempted by 47 U.S.C. Section 230(c). A qui tam action could not be brought against:

- a woman for using, obtaining, or seeking to obtain abortion-inducing drugs to abort or attempt to abort her unborn child;
- a person acting under the direction of a federal agency, contractor, or employee who was carrying out a duty under federal law if the imposition of liability would violate the doctrine of preemption or intergovernmental immunity;
- a transportation network company or a driver for using such a company's digital network to provide a digitally prearranged ride;
- a delivery network company or a delivery person for using such a company's digital network to provide a digitally prearranged delivery;
- an air carrier conducting domestic or flag operations or a foreign air carrier conducting scheduled operations;
- a person to whom the bill did not apply and whom a civil action could not be brought under the bill;
- a health care provider or physician, unless the qui tam relator pled and proved that the provider or physician engaged in conduct that violated the bill while located outside of the state; or
- a pharmaceutical manufacturer, distributor, or common carrier, unless the qui tam relator pled and proved that the defendant failed to adopt and implement a policy to not distribute, mail, transport, deliver, provide, or possess abortion-inducing drugs other than for one or more of the permitted purposes.

A qui tam action could not be brought by any person who:

- impregnated a woman through conduct constituting sexual assault or aggravated sexual assault;
- committed an offense for which an affirmative finding of family

- violence was made;
- provided an abortion-inducing drug to a pregnant woman for the purpose of performing, inducing, or attempting an abortion with the woman's consent or knowledge;
 - had been convicted of an offense relating to stalking; or
 - acted in concert or participation with a person described above.

An action brought under the bill could not be litigated on behalf of a claimant class or a defendant class, and a court could not certify a class in the action. In an action brought under the bill, a qui tam relator or a defendant against whom an action was brought could not, without the consent of the person to whom the information belonged, publicly disclose or improperly obtain:

- any personally identifiable information of a pregnant woman who sought or obtained an abortion-inducing drug from a defendant against whom a qui tam action was brought;
- any information protected from public disclosure under the Health Insurance Portability and Accountability Act (HIPPA) of 1996; or
- any personal data of a pregnant woman who sought or obtained an abortion-inducing drug from a defendant against whom a qui tam action was brought that was protected from public disclosure under federal or state law.

A court could not order in response to the filing of a petition by a qui tam relator the taking of a deposition of a woman who was the subject of a violation of the prohibition, unless the woman consented to the deposition.

Defenses. It would be an affirmative defense to an action brought under the bill that the defendant was unaware that the defendant was engaged in prohibited conduct and took reasonable precautions to ensure the defendant would not violate the bill.

It also would be an affirmative defense to an action that:

- the imposition of civil liability on the defendant would violate the

defendant's rights under federal law, including the U.S. Constitution, or under the Texas Constitution;

- the defendant had standing to assert the rights of a third party and demonstrated that the imposition of civil liability on the defendant would violate the third party's rights; or
- the imposition of civil liability on the defendant would violate limits on extraterritorial jurisdiction imposed by the U.S. Constitution or the Texas Constitution.

The defendant would have the burden of proving an affirmative defense by a preponderance of the evidence.

The following would not be defenses to an action brought under the bill:

- a defendant's ignorance or mistake of law, including the mistaken belief that the requirements or provisions of the bill were unconstitutional or had been unconstitutional;
- a defendant's reliance on a state or federal court decision that was not binding on the court in which the action had been brought;
- a defendant's reliance on a federal agency rule or action that had been repealed, superseded, or declared invalid or unconstitutional, even if the rule or action had not been repealed, superseded, or declared invalid or unconstitutional when the cause of action accrued;
- the laws of another state or jurisdiction, including an abortion shield law, unless the Texas Constitution or federal law compelled the court to enforce that law;
- non-mutual issue preclusion or non-mutual claim preclusion;
- sovereign immunity, governmental immunity, or official immunity, other than those applicable to certain hospitals, political subdivisions, physicians, or health care professionals;
- a claim that enforcement of the bill or imposition of civil liability against the defendant would violate the constitutional or federally protected right of third parties; or
- consent to the abortion by the claimant or the unborn child's

mother.

Statute of limitations. The bill would allow a person to bring an action not later than the sixth anniversary of the date the cause of action accrued.

Remedies. If a qui tam relator prevailed in an action, the court would have to award to the relator injunctive relief sufficient to prevent the defendant from violating the drug prohibition established by the bill, an amount of at least \$100,000 for each violation, and costs and reasonable attorney's fees. In awarding such an amount, the court would be required to ensure that the qui tam relator received the entire amount awarded for an action in which the relator:

- was a woman who was pregnant at the time the woman obtained or received an abortion-inducing drug in violation of the bill; or
- the father, sibling, or grandparent of the unborn child with which the woman was pregnant.

For an action in which the qui tam relator was a person not described above, the court would be required to ensure that the relator received \$10,000 of the total amount awarded, and the remainder of the amount awarded was held in trust by the relator for the benefit of a charitable organization designated by the relator that the relator or a family member did not receive payment or financial benefit.

A court could not grant the award or attorney's fees in response to a violation of the prohibition if the defendant demonstrated that a court had previously ordered the defendant to pay such an award in another action for that particular violation and the court order had not been vacated, reversed, or overturned.

A court could not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the Texas Supreme Court to a defendant against whom an action was brought under the bill. This provision would not preclude a court from awarding sanctions under relevant Civil Practice and Remedies Code provisions or sanctioning a

litigant or attorney for frivolous, malicious, or bad-faith conduct.

Coordinated enforcement prohibited. The state, a political subdivision of the state, or an officer or employee of the state or a political subdivision could not:

- act in concert or participation with a qui tam relator bringing an action;
- establish or attempt to establish any type of agency or fiduciary relationship with a qui tam relator bringing an action;
- attempt to control or influence a person's decision to bring an action or that person's conduct of the litigation; or
- intervene in an action.

This provision would not prohibit the state, a political subdivision, or an officer or employee from filing an amicus curiae brief in an action if the relevant entity did not act in concert or participation with the qui tam relator.

Jurisdiction, applicability of state law. CSHB 7 would establish that Texas courts would have personal jurisdiction over a defendant sued under the bill to the maximum extent permitted by the Fourteenth Amendment of the U.S. Constitution, and that the defendant could be served outside this state. State law would apply to an action to the maximum extent permitted by the Texas Constitution and federal law. Any contractual provision that required or purported to require application of the laws of a different jurisdiction, or that required or purported to require a qui tam action to be litigated in a particular forum, would be void based on this state's public policy and would not be enforceable in any court. Civil Practice and Remedies Code ch. 27 would not apply to an action brought under the bill.

The bill would establish that the Fifteenth Court of Appeals had exclusive appellate jurisdiction over any appeal or original proceeding arising out of an action brought under the bill in a Texas court.

A court could not apply the law of another state or jurisdiction to any qui tam action brought under the bill unless the Texas Constitution or federal law compelled the court to apply that law.

Effect of clawback provisions. The bill would define “clawback provision” as any law of another state or jurisdiction that authorized the bringing of a civil action against a person for:

- bringing or engaging in an action authorized by the bill;
- bring or engaging in an action that alleged a violation of the bill;
- attempting, intending, or threatening to bring or engage in such an action; or
- providing legal representation or any type of assistance to a person who brought or engaged in such an action.

If an action was brought or a judgment was entered against a person under a clawback provision based wholly or partly on the person’s decision to engage in conduct described in this section, that person would be entitled to injunctive relief and damages from any person who brought the action or obtained the judgment or who sought to enforce the judgment. This relief would be required to include:

- compensatory damages;
- costs, expenses, and reasonable attorney’s fees incurred in bringing an action; and
- additional amounts consisting of the greater of twice the sum of the damages, costs, expenses, and fees or \$100,000.

The relief would also have to include injunctive relief that would restrain each of the relevant parties who brought the action under the clawback provision from bringing further actions against certain involved persons, from continuing to litigate any actions brought under a clawback provision, and from enforcing or attempting to enforce any judgment obtained in any actions brought under a clawback provision against those persons.

Except as otherwise provided by federal law, state law would apply to:

- conduct described for purposes of a “clawback provision”;
- an action brought against a person for engaging in such conduct;
- an action brought under a clawback provision against a Texas resident; and
- an action brought under this section that would entitle a person to the injunctive relief and damages described.

In certain clawback provision actions, the court would be required to, on request, issue a temporary, preliminary, or permanent injunction that would restrain each defendant in the action, each person in privity with the defendant, and each person with whom the defendant was in active concert or participation from:

- bringing an action under any clawback provision against a claimant or prosecutor, a person in privity with the claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor; and
- continuing to litigate an action under any clawback provision that had been brought against a claimant or prosecutor, or a person providing legal representation or any type of assistance to the claimant or prosecutor.

The doctrines of res judicata and collateral estoppel would preclude a defendant against whom a judgment was entered in the specified clawback provision actions and each person in privity with the defendant from litigating or relitigating any claim or issue under any clawback provision against a claimant, prosecutor, or person in privity with the claimant or prosecutor that had been raised or could have been raised as a claim, cross-claim, counterclaim, or affirmative defense under federal or Texas rules of civil procedure. A Texas court could not enforce an out-of-state judgment obtained in an action brought under a clawback provision unless federal law or the Texas Constitution required the court to enforce the judgment.

It would not be a defense to an action described above that:

- the claimant failed to seek recovery in an action brought against the claimant under a clawback provision; or
- a court in a preceding action brought against the claimant declined to recognize or enforce this section or held any provision of this section invalid, unconstitutional, or preempted by federal law.

Civil Practice and Remedies Code ch. 27 would not apply to an action brought under this section. The Fifteenth Court of Appeals would have exclusive intermediate appellate jurisdiction over any appeal or original proceeding arising out of a civil action brought under this section in a Texas court.

Severability, effect. It would be the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word of CSHB 7 was severable from each other.

The bill would take effect 91 days after the last day of the legislative session.

**SUPPORTERS
SAY:**

CSHB 7 would protect women and unborn children in the state by providing a necessary prohibition and enforcement tool to address the use of abortion-inducing drugs that have been increasingly sent into the state despite Texas' prohibition on elective abortions. Since *Roe v. Wade* was overturned by the U.S. Supreme Court in 2022, medication abortion has become a predominant method of abortion nationwide. "Shield laws," which have allowed states with such laws, including California, Massachusetts, New York, and Washington, to provide legal protections for healthcare practitioners and pharmaceutical manufacturers providing abortion services to patients in states where it is illegal, have made it easier for these drugs to be sent into Texas without legal ramifications. This has allowed thousands of abortion pill orders to be filled in Texas from out-of-state providers. By authorizing private civil actions against this practice, CSHB 7 would allow Texans to hold violators accountable, deter the flow of abortion-inducing drugs into the state, and provide a

mechanism to close loopholes and enforce laws that otherwise cannot reach out-of-state actors.

By curtailing the influx of abortion-inducing drugs, the bill would protect women from serious health risks that can arise when abortion-inducing drugs are taken without medical supervision. Abortion pills are often mailed directly to women without any prescriptions, instructions, contact information, or directions for follow-up care, leaving those taking the medication unprepared for unknown side effects and dangerous complications, such as hemorrhage, which require immediate medical attention and can be fatal. Women are often mailed pills of an unknown substance with no way to verify whether it is an abortion-inducing drug or poses other safety risks as well. The drugs also have been used coercively, with reports of traffickers or abusive partners administering the pills to women without a woman's consent or knowledge. The bill would provide women with legal recourse against these harms and ensure they were not left to undergo a dangerous medical procedure without proper medical instruction.

CSHB 7 also would create protections to help ensure that women who underwent an abortion or an attempted abortion were not subject to further psychological trauma or abuse during the legal process. The bill would prohibit individuals filing suit from illegally surveilling women or from disclosing the identity and personal information of a woman who sought an abortion. The bill also would prevent convicted abusers or individuals with histories of domestic violence, stalking, or sexual assault from seeking legal action under the bill, further protecting vulnerable women. Additionally, CSHB 7 would prohibit pre-suit depositions of women without their consent, limiting opportunities for harassment and protecting privacy. These provisions would focus the bill's enforcement on those who distributed the drugs while safeguarding women from being drawn into unnecessary legal proceedings.

Furthermore, the bill would avoid creating financial incentives for opportunistic litigation. While plaintiffs could recover \$10,000 in damages, the bulk of the award, \$90,000, would go to a charity unless the plaintiff was the injured party or a relative specified by the bill. This

structure would ensure that litigation enabled by the bill would not be driven by personal profit while still providing accountability for violators.

CSHB 7 would provide Texas with a clear and narrowly tailored way to enforce its abortion laws, offer vital protections for women from coercion and unsafe practices, and safeguard the state's ability to respond to the spread of illegal abortion-inducing drugs.

CRITICS
SAY:

CSHB 7 would remove a legal mechanism by which women in Texas could obtain medication abortions, effectively blocking access to a safe form of reproductive medical care. The drugs mifepristone and misoprostol, which are commonly used in medication abortions, have been FDA-approved for decades and are safely used in over 80 countries. Additionally, clinical research has shown that these medications can be safely taken at home during the first trimester without direct physician supervision. By restricting access, the bill would remove an essential healthcare option and drive women to seek unsafe or unregulated abortion care alternatives, increasing the likelihood of serious harm or death.

The bill would make women experiencing pregnancy complications less safe and could worsen maternal health outcomes in Texas, which already has some of the highest maternal mortality and morbidity rates in the nation. Abortion-inducing drugs are often used when a woman has experienced a miscarriage to prevent infection and potential sepsis. The medication is also used to help induce labor and treat postpartum hemorrhages and ectopic pregnancies. Since the state's abortion ban took effect in 2022, maternal deaths, cases of sepsis, and infant mortality have all risen. Limiting access to these medications could compound these problems by hindering one of the safest ways to manage early pregnancies and complications. At a time when maternal health indicators are worsening, the state should be expanding maternal-related healthcare options, rather than restricting them.

CSHB 7 also could have a chilling effect on the use of medications that physicians regularly prescribe and use in these essential procedures, as the threat of lawsuits and substantial financial penalties could deter physicians from prescribing them even when medically necessary. This could delay

or deny patients timely, lifesaving care and undermine physicians' ability to practice sound medical judgment. Physicians are already subject to civil and criminal liabilities under the law. By creating an additional and redundant cause of action, the bill would increase the risks physicians must undergo to provide necessary prenatal care. The absence of added legal protections for medical providers could heighten uncertainty and deter doctors from offering medically appropriate treatment, ultimately increasing health risks for women. Additionally, by placing the burden of proof on providers, the bill could discourage physicians from providing legally permissible care.

The bill would impose especially heavy burdens on rural Texans, who already face significant barriers to healthcare access. Many rural clinics have closed, and hospitals are often miles away. As public transportation is limited, residents often must depend on family, church members, or community networks to reach care. Penalizing those who assist women in accessing medication abortion, even from states where it remains legal, could disincentivize and cut off these support systems. Furthermore, it would prevent women who don't have access to a nearby physician from obtaining abortion-inducing drugs through the mail, even for necessary and legal medical purposes. For rural women with few options, this could result in life-threatening delays and worse health outcomes.

CSHB 7 would expand civil enforcement in ways that could invite harassment and abuse. The bill would allow individuals with no personal connection to a patient to bring lawsuits and collect damages, creating a system where strangers could profit from deeply personal healthcare decisions. This could turn courts into tools for harassment, potentially forcing women into litigation against their will and subjecting them to public scrutiny. CSHB 7 also could pose constitutional challenges with a similar private enforcement mechanism to the state's 2021 abortion ban, which is still being decided in the courts over whether this procedure undermines due process for defendants and removes enforcement power from the executive branch. Attempting to override other states' shield laws could also raise legal concerns.

In addition, the bill could raise concerns under the Religious Freedom

Restoration Act. By imposing penalties and restrictions on certain reproductive healthcare decisions, CSHB 7 could be seen as targeting or silencing religious perspectives that do not prohibit abortion, creating additional legal conflict while doing little to improve care or outcomes for Texans.

OTHER
CRITICS
SAY:

CSHB 7 does not go far enough to curtail the demand for elective abortions in Texas, since most abortions are sought voluntarily and without coercion. The bill should be amended to provide equal protections for unborn children and ensure that women seeking abortions are held accountable under the law. Without such provisions, CSHB 7 would deter distributors but leave broader abortion access unaddressed. The bill also should ensure that its provisions do not unnecessarily confuse or unintentionally weaken other strong prolife laws in the state.