

BILL ANALYSIS

S.B. 31
By: Hughes
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Over the years, the Texas Legislature has enacted multiple bills affecting abortion-related subjects. The bill sponsor has informed the committee that sometimes these bills incorporated statutory language lacking uniformity between earlier enactments and related codes, used differing language for provisions that are substantively the same or similar, did not take account of relevant court decisions, or resulted in ambiguity. The bill sponsor has further informed the committee that confusing statutes and lack of clear guidance are frequently cited by health care providers as reasons critical care for pregnant women has been negatively affected. As reported by the *Texas Tribune*, problems with the current law were also examined in detail in response to a rulemaking petition considered by the Texas Medical Board in 2024 and following entreaties by legislators and the Texas Supreme Court for more clarity in the law.

S.B. 31, the Life of the Mother Act, seeks to clarify existing medical emergency exceptions to otherwise prohibited abortions, which are spread throughout or implicated by multiple provisions in different codes, and provide uniformity among them. The bill also provides for the development of certain continuing medical education and continuing legal education courses regarding the state's abortion laws and the medical emergency exceptions addressed by the bill.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Medical Board in SECTION 19 of this bill.

ANALYSIS

S.B. 31 revises state law relating to exceptions to otherwise prohibited abortions based on a physician's reasonable medical judgment.

Performance of Abortion

S.B. 31 amends the Health and Safety Code to make certain changes relating to the exception to the prohibition against knowingly performing, inducing, or attempting an abortion for a licensed physician who performs, induces, or attempts an abortion on a pregnant female who, in the exercise of reasonable medical judgment, has 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. Specifically, the bill does the following:

- replaces the specification that the prohibition does not apply if the requisite conditions are satisfied with a specification that it is an exception to the application of the prohibition if the requisite conditions are satisfied;
- authorizes a physician, if a pregnant woman has such a life-threatening physical condition, to address the risk of death or substantial impairment of a major bodily function before the pregnant female suffers any effects of the risk;
- establishes that the provision conditioning the exception on the pregnant female having a life-threatening physical condition does not require that, before the physician may act, the risk of death or substantial impairment of a major bodily function be imminent, the pregnant female first suffer physical impairment, or the physical condition has caused damage to the pregnant female;
- defines "life-threatening" for purposes of the exception to mean capable of causing death or potentially fatal;
- specifies that a life-threatening physical condition is not necessarily one actively injuring the patient; and
- removes as a condition that must be met for the exception to apply that the physician 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 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.

However, the bill sets out provisions relating to treatment affecting an unborn child that are similar to the condition being removed but do the following instead:

- require a physician who treats a life-threatening physical condition described by the exception to do so in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for survival of an unborn child; and
- except a physician from that requirement if, in the physician's reasonable medical judgment, the required manner of treatment would create a greater risk of the pregnant female's death or substantial impairment of a major bodily function of the pregnant female.

The bill establishes that provisions relating to the performance of abortion do 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, but that nothing in this provision of the bill authorizes the performance of an abortion that is prohibited by law.

S.B. 31 establishes that reasonable medical judgment in providing medical treatment to a pregnant female includes removing a dead, unborn child whose death was caused by spontaneous abortion and removing an ectopic pregnancy, defined by reference to that term's definition under provisions relating to the licensing of abortion facilities as amended by the bill.

The bill repeals the following provisions:

- Civil Practice and Remedies Code provisions establishing an affirmative defense to liability in a civil action for a violation of the prohibition against knowingly performing, inducing, or attempting an abortion for the following individuals:
 - a physician or health care provider who exercised reasonable medical judgment in providing medical treatment to a pregnant woman in response to an ectopic pregnancy at any location or a previsible premature rupture of membranes; and
 - a pharmacist or pharmacy that receives, processes, or dispenses a prescription drug or medication order written by the physician or health care provider; and
- a Penal Code provision establishing that a physician or health care provider is justified in exercising reasonable medical judgment in providing medical treatment to a pregnant woman as described in those affirmative defense provisions.

S.B. 31 establishes that, for any law that provides an exception to an otherwise prohibited abortion based on a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the pregnant 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, it is an exception to the application of the law 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. The bill repeals a provision establishing that medical treatment provided to a 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 the prohibition against knowingly performing, inducing, or attempting an abortion.

Medical Liability

S.B. 31 amends the Civil Practice and Remedies Code to replace the provision establishing that an action to which the affirmative defense repealed by the bill applies is a health care liability claim and subject to the same requirements as any other health care liability claim with a provision establishing that a civil action brought against a physician or health care provider for a violation of any of the following statutes, subject to an exception provided by the statute alleged to have been violated or other law, is a health care liability claim and subject to the same requirements as any other health care liability claim:

- Health and Safety Code provisions prohibiting certain third trimester abortions;
- Health and Safety Code provisions relating to the performance of abortion; or
- the Woman's Right to Know Act.

The bill establishes that this provision does not affect a health care liability claim based on any other ground than a violation of the specified statutes.

Woman's Right to Know Act

S.B. 31 amends the Health and Safety Code to replace the existing definition of "medical emergency" under the Woman's Right to Know Act with a substantially similar definition that references a life-threatening physical condition described in the exception to the prohibition against knowingly performing, inducing, or attempting an abortion.

S.B. 31 revises the circumstances in which certain prohibitions and requirements relating to abortion at or after 20 weeks post-fertilization do not apply as follows:

- removes as the circumstance triggering the exception that 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 noncompliance with the applicable prohibition or requirement; and
- replaces it with the condition that, in the physician's reasonable medical judgment, the abortion is necessary due to a medical emergency, as that term is defined by the bill for the Woman's Right to Know Act, and necessitates such noncompliance.

S.B. 31 revises the requirement for a physician providing an abortion-inducing drug to document, in the woman's medical record, the gestational age and intrauterine location of the pregnancy to determine whether an ectopic pregnancy exists by doing the following:

- removing the specification that the location of the pregnancy to be documented is an intrauterine location; and
- defining "ectopic pregnancy" by reference to that term's definition under provisions relating to the licensing of abortion facilities as amended by the bill.

S.B. 31 establishes that provisions relating to detection of fetal heartbeat apply only to an abortion that is otherwise prohibited by law and that is not subject to an exception provided by law. The bill establishes that the following activities do not constitute aiding or abetting under those provisions:

- providing services by a physician or health care provider to a treating physician, or communication between a physician or health care provider and a treating physician, for the purposes of arriving at a reasonable medical judgment as required by an exception to an otherwise prohibited abortion;
- communicating between a physician or health care provider and a patient, or providing services by a physician or health care provider to a patient, for the purpose of arriving at reasonable medical judgment as required by an exception to an otherwise prohibited abortion;
- communicating between an attorney and a physician or health care provider related to an exception to an otherwise prohibited abortion;
- communicating between a treating physician and any other person or providing services to a treating physician or patient relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is applicable; and
- providing products to a patient or treating physician relating to performing, inducing, or attempting an abortion for which the treating physician has determined that, in reasonable medical judgment, an exception to an otherwise prohibited abortion is applicable.

Licensing of Abortion Facilities

S.B. 31 amends the Health and Safety Code to expand the definition of "ectopic pregnancy" for purposes of provisions relating to the licensing of abortion facilities by including the implantation of a fertilized egg or embryo in an abnormal location in the uterus or in a scarred portion of the uterus, causing the pregnancy to be non-viable.

S.B. 31 removes a provision establishing that provisions relating to the licensing of abortion facilities do 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. The bill establishes instead an exception to the application of the criminal offense of establishing or operating an unlicensed abortion facility for an abortion that is performed in an unlicensed abortion facility due to a medical emergency in which the pregnant female has a life-threatening physical condition described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion. For purposes of this exception, 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.

Medical Practice Act Changes

S.B. 31 amends the Occupations Code to prohibit provisions relating to prohibited practices by a physician or physician license applicant from being construed to prohibit, and the Texas Medical Board (TMB) from taking action against a physician regarding, the performance of an abortion in response to a medical emergency in which the pregnant female has a life-threatening physical condition described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion.

S.B. 31 replaces the prohibition against the TMB taking disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by the repealed Civil Practice and Remedies Code provisions establishing an affirmative defense to civil liability with a prohibition against the TMB taking disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion due to a medical emergency in which the pregnant female has a life-threatening physical condition.

S.B. 31 excepts a person from application of the third degree felony offense of practicing medicine in Texas in violation of the Medical Practice Act if the person is a physician who performs, induces, or attempts an abortion due to a medical emergency in which the pregnant female has a life-threatening physical condition described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion.

Vernon's Civil Statutes

S.B. 31 amends Vernon's Civil Statutes to do the following with respect to the civil statutes relating to abortion:

- remove a provision establishing that nothing in those civil statutes applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother; and
- establish instead that it is an exception to the application of those civil statutes that an abortion is procured, performed, or attempted due to a medical emergency in which the pregnant female has a life-threatening physical condition described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion.

The bill establishes that, for these purposes, "medical emergency" means 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.

S.B. 31 establishes that these changes to the civil statutes relating to abortion may not be construed to affirm or reject the validity or efficacy of any provision within those civil statutes, affirm or reject that any such provision has been revived or remains or has become good law, or moot any judicial proceedings concerning the validity or efficacy of any such provision. The bill establishes that the legislature makes such changes to the civil statutes relating to abortion solely to clarify statutory text and to ensure medical care may be provided to a pregnant woman in an applicable medical emergency without prejudice to, or resolution of, any question concerning any such provision.

S.B. 31 requires a chapter of a civil statute any part of which is amended by the bill to be construed as consistent with the following state court decisions that a pregnant female who obtains, attempts to obtain, procures, or attempts to procure an abortion for herself is not guilty as a party, principal, perpetrator, or accomplice to an offense prohibiting such conduct:

- *Watson v. State*, 9 Tex. Ct. App 237, 244-245 (1880);
- *Willingham v. State*, 25 S.W. 424 (Tex. Crim. App. 1894);
- *Gray v. State*, 178 S.W. 337, 341 (Tex. Crim. App. 1915);
- *Smith v. State*, 237 S.W. 265, 266 (Tex. Crim. App. 1922);
- *Easter v. State*, 536 S.W.2d 223, 229 (Tex. Crim. App. 1976); and
- *Robinson v. State*, 815 S.W.2d 361, 364 (Tex. App.-Austin 1991).

Construction of Exceptions

S.B. 31 requires the exceptions to otherwise prohibited abortions described by the bill to 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. The bill further requires those exceptions to 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.

Repealed Provisions

S.B. 31 repeals the following statutes:

- Section 74.552, Civil Practice and Remedies Code;
- Section 170A.002(d), Health and Safety Code; and
- Section 9.35, Penal Code.

Continuing Legal Education

S.B. 31 requires the State Bar of Texas, for purposes of increasing the understanding of the legal profession regarding the laws regulating abortion following the changes in law made by the bill, to develop, or solicit the development of, and offer to attorneys licensed in Texas a comprehensive program of continuing legal education regarding the regulation of abortion in Texas, with a focus on the exceptions to otherwise prohibited abortions. The bill requires the program to include legal education regarding the following:

- statutory terminology applicable to the definition and regulation of abortion;
- prohibited abortions and prohibited medical techniques related to the performance of abortions;
- state law establishing statutory exceptions to otherwise prohibited abortions;
- the civil and criminal implications of abortion regulation in Texas and the implications of statutory exceptions to otherwise prohibited abortions;
- the definition of "medical emergency" as described by the exception to the prohibition against knowingly performing, inducing, or attempting an abortion;
- the responsibility of a physician to exercise reasonable medical judgment in determining whether a condition or conditions exist allowing the performance of an abortion during a medical emergency; and
- the circumstances under which a physician is required to treat a pregnant female who experiences such conditions in a manner that maximizes an unborn child's opportunity to survive if doing so does not increase the threat to the mother presented by those conditions, as provided by the applicable bill provisions.

S.B. 31 sets out the following requirements for the program:

- a requirement for the program to be developed in cooperation with the Health Law Section of the State Bar of Texas, physician and health care provider organizations, and other non-state bar stakeholders with a demonstrated interest and expertise in the required subject matter; and
- a requirement for the program to be promoted by communications made by the state bar to all attorneys in Texas, organizations representing physicians and health care providers whose members treat pregnant women, and health care institutions as defined by reference to Civil Practice and Remedies Codes provisions relating to medical liability.

S.B. 31 requires the course of instruction to be offered at no cost to attorneys licensed in Texas and to be offered on the Internet provided through the state bar in addition to any other method approved by the state bar. The bill requires the program to be offered not later than January 1, 2026.

Continuing Medical Education

S.B. 31 requires the TMB, not 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 the public health provisions of the Health and Safety Code, as amended by the bill. The bill authorizes the TMB to solicit the development of such a course by organizations representing physicians, institutions of higher education with medical schools, or other providers of continuing education to physicians acceptable to the TMB. The bill requires the TMB, after approval of a continuing education course under these provisions, to inform all licensed physicians in Texas 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. The bill requires

completion of such a course to be credited to the requirements for continuing medical education enforced by the TMB. The bill requires such a course to address the following:

- what does and does not constitute an abortion, including exclusions from that term for ectopic pregnancy and spontaneous abortion;
- the laws prohibiting abortion and any procedures prohibited by law for performing an abortion;
- the statutory exceptions to laws prohibiting abortion with an emphasis on exceptions based on a medical emergency as the term "medical emergency" is used in the public health provisions of the Health and Safety Code, as amended by the bill; and
- the laws regarding reasonable medical judgment as used in connection with the medical emergency exceptions to laws prohibiting abortions.

The bill establishes that such continuing medical education does not constitute aiding or abetting as those terms are used in statutory provisions relating to the detection of fetal heartbeat.

S.B. 31 requires a physician licensed to practice medicine who provides obstetric care to complete, before initial licensure in Texas or before the physician's license renewal after January 1, 2026, a course approved by the TMB under these bill provisions that equals at least one hour of continuing medical education. The bill clarifies that this is a one-time requirement and prohibits the initial issuance or renewal of the license of a physician who has not complied with this requirement. The bill requires the TMB to adopt rules to implement these provisions.

S.B. 31 requires the TMB to make available at least one course required by these bill provisions at no cost to physicians licensed in Texas and include on its website a list of the approved courses. The bill establishes that nothing in the bill's provisions relating to continuing medical education does the following:

- 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 Civil Practice and Remedies Code provisions relating to medical liability, based on any ground other than a violation of Health and Safety Code provisions prohibiting certain third trimester abortions, Health and Safety Code provisions relating to the performance of abortion, or the Woman's Right to Know Act.

Severability

S.B. 31 establishes that every provision in the bill and every application of a provision in the bill is severable from any other. If any provision or application of any provision in the bill to any person, group of persons, or circumstance is held by a court to be invalid, the invalidity does not affect the other provisions or applications of the bill.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.