

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 9
By: Paxton et al.
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The goal of this bill is to end the practice of abortion in Texas in the event, and to the extent that the Supreme Court reverses its rulings under *Roe v. Wade* and *Planned Parenthood v. Casey*. If overturned, abortion lawmaking authority would return to the state. This bill seeks to ensure that if this happens, Texas has a mechanism in place to stop this practice as soon as possible.

Currently, ten states (Arkansas, Idaho, Kentucky, Louisiana, Mississippi, North Dakota, Missouri, Tennessee, South Dakota, and Utah) have enacted similar pieces of legislation.

S.B. 9 will go into effect 30 days after the Supreme Court issues a judgment in a decision overturning, either fully or in part, the decisions handed down in *Roe v. Wade* or *Planned Parenthood v. Casey*, thereby taking effect to end the practice of abortion to the extent allowable under the new precedent.

(Original Author's / Sponsor's Statement of Intent)

C.S.S.B.9 amends current law relating to prohibition of abortion, provides a civil penalty, and creates a criminal offense.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Provides that this Act may be cited as the Human Life Protection Act of 2021.

SECTION 2. Amends Subtitle H, Title 2, Health and Safety Code, by adding Chapter 170A, as follows:

CHAPTER 170A. PERFORMANCE OF ABORTION

Sec. 170A.001. DEFINITIONS. Provides that:

- (1) "Abortion" has the meaning assigned by Section 245.002 (Definitions);
- (2) "Fertilization" means the point in time when a male human sperm penetrates the zona pellucida of a female human ovum;
- (3) "Pregnant" means the female human reproductive condition of having a living unborn child within the female's body during the entire embryonic and fetal stages of the unborn child's development from fertilization until birth;
- (4) "Reasonable medical judgment" means a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved;

(5) "Unborn child" means an individual living member of the homo sapiens species from fertilization until birth, including the entire embryonic and fetal stages of development.

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) Prohibits a person from knowingly performing, inducing, or attempting an abortion.

(b) Provides that the prohibition under Subsection (a) does not apply if:

(1) the person performing, inducing, or attempting the abortion is a licensed physician;

(2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted 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; and

(3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create a greater risk of the pregnant female's death, or a serious risk of substantial impairment of a major bodily function of the pregnant female.

(c) Prohibits a physician from taking an action authorized under Subsection (b) if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by Subsection (b)(2) arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a major bodily function.

(d) Provides that medical treatment provided to the pregnant female by a licensed physician that results in the accidental or unintentional injury or death of the unborn child does not constitute a violation of this section.

Sec. 170A.003. CONSTRUCTION OF CHAPTER. Prohibits this chapter from being construed to authorize the imposition of criminal, civil, or administrative liability or penalties on a pregnant female on whom an abortion is performed, induced, or attempted.

Sec. 170A.004. CRIMINAL OFFENSE. (a) Provides that a person who violates Section 170A.002 commits an offense.

(b) Provides that an offense under this section is a felony of the second degree, except that the offense is a felony of the first degree if an unborn child dies as a result of the offense.

Sec. 170A.005. CIVIL PENALTY. Provides that a person who violates Section 170A.002 is subject to a civil penalty of not less than \$100,000 for each violation. Requires the attorney general to file an action to recover a civil penalty assessed under this section and authorizes the attorney general to recover attorney's fees and costs incurred in bringing the action.

Sec. 170A.006. CIVIL REMEDIES UNAFFECTED. Provides that the fact that conduct is subject to a civil or criminal penalty under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

Sec. 170A.007. DISCIPLINARY ACTION. Requires the appropriate licensing authority, in addition to any other penalty that may be imposed under this chapter, to revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation of Section 170A.002.

SECTION 3. Provides that Section 2 of this Act takes effect, to the extent permitted, on the 30th day after:

(1) the issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states of the United States to prohibit abortion;

(2) the issuance of any other United States Supreme Court judgment in a decision that recognizes, wholly or partly, the authority of the states to prohibit abortion; or

(3) adoption of an amendment to the United States Constitution that, wholly or partly, restores to the states the authority to prohibit abortion.

SECTION 4. Severability clause.

SECTION 5. Effective date: September 1, 2021.