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88th Texas Legislature

Reproductive Rights & Abortion Access Preview

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***JWHO v. Dobbs* – Impact on Texas law**

Texas Laws – 4 abortion bans in effect

- Old Pre Roe Law
- Trigger Ban
 - Other General Criminal law – The law of parties
- 6 week ban with civil enforcement (SB 8)
- Medication Abortion delivery ban (SB 4)

Practical impacts on work and life in Texas

- Advocacy and Information
- Funding and Out of state travel
- SMA



Texas law and Abortion access after *Dobbs*

- No abortions since *Dobbs* because of Pre-Roe laws and trigger ban going into effect
- Most Funds have stopped providing support beyond information for abortion care
 - No funding for procedures or travel or other practical support
- Hospitals and pharmacies have been denying other non-abortion care even when they could legally provide it

Exclusions and exceptions

An act is not an abortion if the act is done with the intent to:

- (A) save the life or preserve the health of an unborn child;
- (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
- (C) remove an ectopic pregnancy.

Life and health exception:

(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

What even is an abortion (according to Texas)?

Sec. 245.002. DEFINITIONS. In this chapter:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

Trigger Law

Sec. 170A.002. PROHIBITED ABORTION; EXCEPTIONS. (a) A person may not knowingly **perform, induce,** or attempt an **abortion.**

(b) 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) a greater risk of the pregnant female's death; or

(B) a serious risk of substantial impairment of a major bodily function of the pregnant female.

Trigger Law

Penalties

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

(b) 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. A person who violates Section 170A.002 is subject to a civil penalty of not less than \$100,000 for each violation. The attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action.

1st degree felony 5-99 years, 2nd degree felony, 2-20 years

Pregnant person excluded from prosecution

Sec. 170A.003. CONSTRUCTION OF CHAPTER. This chapter may not be 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.

Trigger Law

Effective Date

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;

Law of Parties – General Criminal law

Texas Penal Code Sec. 7.02. Criminal Responsibility for Conduct of Another.

(a) A person is criminally responsible for **an offense committed by the conduct of another** if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the

Law of Parties – Texas Penal Code 7.02(2)

Sec. 7.02. Criminal Responsibility for Conduct of Another.

(2) acting with intent to promote or assist the **commission of the offense**, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

Remains Unknown whether “encourages, directs, aids, or attempts to aid” applies to the providing of SMA or telemed information regarding the commission of a crime.

There must be a crime committed (offense) to be a party to it.

If it's not a crime for a pregnant woman to access certain services or self-administer certain drugs, then how can a third person be a criminal party to acts which are not a crime?

So, the part in (a) that says “for an offense committed by the conduct of another” would seem to preclude the application of the law of parties to the providing of information.

Pre- Roe Criminal Laws

Art. 4512.1. ABORTION. If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

Art. 4512.2. FURNISHING THE MEANS. Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Art. 4512.6. BY MEDICAL ADVICE. Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

Pre- Roe Criminal Laws

Texas Freedom Caucus says this applies to providing payment for an abortion or transportation and travel for abortions out of state.

Art. 4512.2. FURNISHING THE MEANS. Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Pre- Roe Criminal Laws - Are they in effect? If so, what do they mean?

? No one knows. ?

- ★ Briscoe = **YES**, letters to Lyft, Abortion funds, law firm Sidley Austin.
- ★ Everyone else - eh, maybe?
- ★ CRR sued on behalf of clinics - currently being considered in Texas courts in Houston and Texas Supreme Court to resolve if the law is in effect
- ★ Abortion Funds Sued in Federal Court in Austin to clarify that they can't apply to travel assistance and payment for legal abortion in another state

SB 8 6 week ban with Private Cause of Action

1. Still in effect
2. Still only applies to AB after detectable heartbeat, with other laws possibly also criminalizing before that.

A person could be sued and prosecuted.

Medical Abortion Delivery Ban

(a) A person may not knowingly provide an abortion-inducing drug to a pregnant woman for the purpose of inducing an abortion in the pregnant woman or enabling another person to induce an abortion in the pregnant woman unless:

- (1) the person who provides the abortion-inducing drug is a physician; and
- (2) the provision of the abortion-inducing drug satisfies the protocol authorized by this subchapter

(b-1) A manufacturer, supplier, physician, or any other person may not provide to a patient any abortion-inducing drug by courier, delivery, or mail service.

(8-a) "Provide" means, as used with regard to abortion-inducing drugs, any act of giving, selling, dispensing, administering, transferring possession, or otherwise providing or prescribing an abortion-inducing drug.

Medical Abortion Delivery Ban (SMA exception)

Sec. 171.065. CRIMINAL OFFENSE. (a) A person who intentionally, knowingly, or recklessly violates this subchapter commits an offense. An offense under this subsection is a state jail felony.

(b) A pregnant woman on whom a drug-induced abortion is attempted, induced, or performed in violation of this subchapter is not criminally liable for the violation.

Current Litigation

Fund Texas Choice et al v. Paxton

- Challenges interpretation of law that makes travel support and payment for out of state abortion illegal

Medical abortion cases in South Carolina and West Virginia

- Challenges the power of states to regulate prescription drugs approved by FDA beyond the FDA's regulations

Current anti-abortion Legislation

Bills attacking prosecutorial discretion

- Provides for the removal of local prosecutors who have a policy or practice of not enforcing certain laws

Bills prohibiting providing practical support for abortion care

- HB 61 (Noble) prohibits cities and counties from funding practical support.
- HB 787 (Patterson) prohibits companies who provide practical support from receiving tax incentives.

I expect to see more, but until they cross the line of criminal penalties or other punishment for the pregnant person they is not much else to do.

Current & Anticipated Pro- Reproductive Rights Bills

Bills expanding contraceptive access

- HB 1176 (Ramos) SB 366 (Johnson) - My Body My Future Act - Allows teens to consent to prescription contraception
- HB 141 (Howard) SB 407 (Eckhardt) Covers contraception in CHIP

Bills prohibiting providing practical support for abortion care

- HB 61 (Noble) prohibits cities and counties from funding practical support.
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Current & Anticipated Pro- Reproductive Rights Bills

Removing limits on providers participating in state health programs

- Free Choice of Provider Act

Non-Discrimination based on Reproductive Health Decisions

- HB 722 (Rosenthal) Bosses out of the Bedroom Act - prohibits discrimination in employment - potential expansion to housing and public accommodations

Protection and Privacy for reproductive and sexual Healthcare providers

- Safe at Home Act - protects home address of reproductive health and gender affirming care providers

Municipal bans – Lubbock, Waskom etc.

- Probably overlap with criminal law and 6 week cause of action.
- Still only apply within city limits and many have private cause of action

Practical impacts on work and life in Texas

- **Advocacy and Information**

- Generally protected
 - providing accurate information about legality and availability of abortion in other states
 - IneedanA.com
 - NeedAbortion.org
- Information on SMA
 - PlanCPills
 - Aid-Access

- **Funding and helping Out of State Travel**

- Should be straightforward - it's not, Briscoe claims it's a crime, funds have stopped services while it is sorted out and have sued *FTC v. Paxton*
- Proposed legislation to limit travel

- **Harm to Texans seeking other care**

- Pharmacists denying drugs for other uses
- Hospitals denying care for ectopic pregnancy

Each of these is a choice and we should loudly say how abortion restrictions harm other care, and that the providers should do better, and not deny legal care.

What's next and what can we do

Election and Legislative session in January

- Election in November
 - Avow has endorsed incumbents and will endorse challenge champions next week
 - Support these candidates and let them know why!
 - Thanks for your support! Consider a PAC gift
- Potential travel bans, removing protection for SMA
- Clawing back what we can (exceptions for sexual assault, fetal anomaly)

Educate your community

No matter how genial or nice your Republican member of the legislature is, they all voted for these bans. Tell your friends why you are voting against them.

Donate to your favorite abortion fund (or all of them)

<https://secure.actblue.com/donate/txfunds>

They are experts and abortion concierges, if you know someone who needs help refer them for information and advice, and hopefully funding and support soon