

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for impregnation resulting in
unintended pregnancy.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Civil Practice and Remedies Code, is
amended by adding Chapter 81A to read as follows:

CHAPTER 81A. LIABILITY FOR IMPREGNATION RESULTING IN UNINTENDED
PREGNANCY

Sec. 81A.001. DEFINITIONS. In this chapter:

(1) "Pregnancy" means the human reproductive
condition that:

(A) begins with fertilization; and

(B) occurs when the individual is carrying the
developing human offspring.

(2) "Unintended pregnancy" means a pregnancy that was
not the impregnated individual's desired result of the defendant's
conduct that resulted in the pregnancy at the time of the conduct.

Sec. 81A.002. LIMITATIONS ON PUBLIC ENFORCEMENT. (a)
Notwithstanding any other law, this chapter shall be enforced
exclusively through the private civil action described by Section
81A.003. No enforcement action under this chapter, in response to
conduct described by Section 81A.003, may be taken or threatened by
this state, a political subdivision, a district or county attorney,
or an executive or administrative officer or employee of this state

1 or a political subdivision against any person, except as provided
2 by Section 81A.008.

3 (b) Subsection (a) may not be construed to:

4 (1) limit in any way or affect the availability of a
5 remedy established by Section 81A.003; or

6 (2) limit the enforceability of any other laws that
7 prohibit sexual assault.

8 Sec. 81A.003. LIABILITY FOR UNINTENDED PREGNANCY. Any
9 person, other than an officer or employee of a state or local
10 governmental entity in this state, may bring a civil action against
11 an individual who impregnates another individual if the pregnancy
12 is an unintended pregnancy.

13 Sec. 81A.004. DAMAGES. (a) If a claimant prevails in an
14 action brought under this chapter, the court shall award:

15 (1) injunctive relief sufficient to prevent the
16 defendant from engaging in acts that result in the unintended
17 pregnancy of other individuals;

18 (2) statutory damages in an amount of not less than
19 \$10,000 for each unintended pregnancy that the defendant caused by
20 impregnation; and

21 (3) costs and attorney's fees.

22 (b) Notwithstanding Subsection (a), a court may not award
23 relief under this section if the defendant demonstrates that the
24 defendant previously paid the full amount of statutory damages
25 under Subsection (a)(2) in a previous action for that particular
26 unintended pregnancy.

27 (c) Sections 41.003 and 41.004 do not apply to an action

1 brought under this chapter.

2 Sec. 81A.005. LIMITATIONS PERIOD. Notwithstanding Chapter
3 16 or any other law, a person may bring an action under this chapter
4 not later than the fourth anniversary of the date the cause of
5 action accrues.

6 Sec. 81A.006. DEFENSES. (a) Notwithstanding any other
7 law, the following are not a defense to an action brought under this
8 chapter:

9 (1) ignorance or mistake of law;

10 (2) a defendant's belief that the requirements of this
11 chapter are unconstitutional or were unconstitutional;

12 (3) a defendant's reliance on any court decision that
13 has been overruled on appeal or by a subsequent court, even if that
14 court decision had not been overruled when the defendant engaged in
15 conduct that violates this chapter;

16 (4) a defendant's reliance on any state or federal
17 court decision that is not binding on the court in which the action
18 has been brought;

19 (5) non-mutual issue preclusion or non-mutual claim
20 preclusion; or

21 (6) any claim that the enforcement of this chapter or
22 the imposition of civil liability against the defendant will
23 violate the constitutional rights of third parties.

24 (b) It is an affirmative defense if an individual sued under
25 this chapter reasonably believed, after conducting a reasonable
26 investigation, that the impregnated individual wanted the
27 pregnancy that is the basis for the action at the time of the

1 defendant's conduct that resulted in the impregnation.

2 (c) The defendant has the burden of proving an affirmative
3 defense under Subsection (b) by a preponderance of the evidence.

4 Sec. 81A.007. CONSTRUCTION OF CHAPTER. This chapter may
5 not be construed to impose liability on any speech or conduct
6 protected by the First Amendment of the United States Constitution,
7 as made applicable to the states through the United States Supreme
8 Court's interpretation of the Fourteenth Amendment of the United
9 States Constitution, or by Section 8, Article I, Texas
10 Constitution.

11 Sec. 81A.008. GOVERNMENTAL INTERVENTION PROHIBITED.
12 Notwithstanding any other law, this state, a state official, or a
13 district or county attorney may not intervene in an action brought
14 under this chapter. This section does not prohibit a person
15 described by this section from filing an amicus curiae brief in the
16 action.

17 Sec. 81A.009. ATTORNEY'S FEES AND COSTS PROHIBITED FOR
18 DEFENDANT. Notwithstanding any other law, a court may not award
19 costs or attorney's fees under the Texas Rules of Civil Procedure or
20 any other rule adopted by the supreme court under Section 22.004,
21 Government Code, to a defendant in an action brought under this
22 chapter.

23 Sec. 81A.010. VENUE. (a) Notwithstanding any other law,
24 including Section 15.002, an action brought under this chapter
25 shall be brought in:

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

1 (2) the county of residence for the defendant at the
2 time the cause of action accrued; or

3 (3) the county of residence for the claimant if the
4 claimant is a natural person residing in this state.

5 (b) If an action is brought under this chapter in any one of
6 the venues described by Subsection (a), the action may not be
7 transferred to a different venue without the written consent of all
8 parties.

9 Sec. 81A.011. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL
10 IMMUNITY PRESERVED. (a) This section prevails over any
11 conflicting law, including:

12 (1) the Uniform Declaratory Judgments Act; and

13 (2) Chapter 37.

14 (b) This state has sovereign immunity, a political
15 subdivision has governmental immunity, and each officer and
16 employee of this state or a political subdivision has official
17 immunity in any action, claim, or counterclaim or any type of legal
18 or equitable action that challenges the validity of any provision
19 or application of this chapter, on constitutional grounds or
20 otherwise.

21 (c) A provision of state law may not be construed to waive or
22 abrogate an immunity described by Subsection (b) unless it
23 expressly waives immunity under this section.

24 Sec. 81A.012. SEVERABILITY. (a) It is the intent of the
25 legislature that every provision, section, subsection, sentence,
26 clause, phrase, or word in this chapter, and every application of
27 the provisions in this chapter, are severable from each other.

1 (b) If any application of any provision in this chapter to
2 any person, group of persons, or circumstances is found by a court
3 to be invalid or unconstitutional, the remaining applications of
4 that provision to all other persons and circumstances shall be
5 severed and may not be affected. All constitutionally valid
6 applications of this chapter shall be severed from any applications
7 that a court finds to be invalid, leaving the valid applications in
8 force, because it is the legislature's intent and priority that the
9 valid applications be allowed to stand alone.

10 (c) If any court declares or finds a provision of this
11 chapter facially unconstitutional, when discrete applications of
12 that provision can be enforced against a person, group of persons,
13 or circumstances without violating the United States Constitution
14 and Texas Constitution, those applications shall be severed from
15 all remaining applications of the provision, and the provision
16 shall be interpreted as if the legislature had enacted a provision
17 limited to the persons, group of persons, or circumstances for
18 which the provision's application will not violate the United
19 States Constitution and Texas Constitution.

20 (d) The legislature further declares that it would have
21 enacted this chapter, and each provision, section, subsection,
22 sentence, clause, phrase, or word, and all constitutional
23 applications of this chapter, irrespective of the fact that any
24 provision, section, subsection, sentence, clause, phrase, or word,
25 or applications of this chapter, were to be declared
26 unconstitutional.

27 (e) If any provision of this chapter is found by any court to

1 be unconstitutionally vague, then the applications of that
2 provision that do not present constitutional vagueness problems
3 shall be severed and remain in force.

4 (f) No court may decline to enforce the severability
5 requirements of Subsections (a), (b), (c), (d), and (e) on the
6 ground that severance would rewrite the statute or involve the
7 court in legislative or lawmaking activity. A court that declines
8 to enforce or enjoins a state official from enforcing a statutory
9 provision does not rewrite a statute, as the statute continues to
10 contain the same words as before the court's decision. A judicial
11 injunction or declaration of unconstitutionality:

12 (1) is nothing more than an edict prohibiting
13 enforcement that may subsequently be vacated by a later court if
14 that court has a different understanding of the requirements of the
15 Texas Constitution or United States Constitution;

16 (2) is not a formal amendment of the language in a
17 statute; and

18 (3) no more rewrites a statute than a decision by the
19 executive not to enforce a duly enacted statute in a limited and
20 defined set of circumstances.

21 SECTION 2. Chapter 81A, Civil Practice and Remedies Code,
22 as added by this Act, applies only to a cause of action that accrues
23 on or after the effective date of this Act.

24 SECTION 3. This Act takes effect September 1, 2023.