



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

UPDATED ADVISORY ON TEXAS LAW UPON REVERSAL OF *ROE V. WADE*

Yesterday—July 26, 2022—the United States Supreme Court issued its final judgment in *Dobbs v. Jackson Women’s Health Organization*. As previously stated in our [June 24th Advisory](#), Texas’s Human Life Protection Act (“the Act”) takes effect on the 30th day after issuance of a judgment in a case overturning *Roe v. Wade*. See H.B. 1280, 87th Reg. Session 2021. Accordingly, we now know with certainty that the Act takes effect on August 25, 2022.

The Act provides that a “person may not knowingly perform, induce, or attempt an abortion” unless the mother has “a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places [her] at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.” Tex. Health & Safety Code § 170A.002(a)–(b).

“Abortion” is defined in section 245.002(1) of the Health and Safety Code as “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.” The term “abortion” in Texas law does not apply when these acts are done 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.” Tex. Health & Safety Code § 245.002(1)(A)–(C).

A person who violates the Act commits a first-degree felony if an unborn child dies as a result, a second-degree felony if the child lives, incurs civil penalties of no less than \$100,000 for each violation, and may lose his or her professional license. *Id.* § 170A.004–.007. The pregnant woman upon whom the abortion is performed cannot be penalized, *id.* § 170A.003, and the law protects women facing life-threatening physical conditions resulting from pregnancy complications, *id.* § 170A.002(b)(2).

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My office is specifically authorized to pursue and recover civil penalties for violations of the Act, *id.* § 170A.005, and I will do my duty to enforce this law. Further, we stand ready to assist any local prosecutor who pursues criminal charges. Tex. Gov't Code § 402.028. Additionally, state licensing authorities “shall 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” the Act. Tex. Health & Safety Code § 170A.007.

At the same time, local prosecutors may choose to immediately pursue criminal prosecutions based on violations of Texas abortion prohibitions predating *Roe* that were never repealed by the Texas Legislature.¹ Although these statutes were unenforceable while *Roe* was on the books, they are still Texas law. Now that *Roe* has been overturned, those statutes are in full effect.²

Texas law in a post-*Roe* world has already been written. Now that the Supreme Court has finally overturned *Roe*, I will do everything in my power to protect mothers, families, and unborn children, and to uphold the state laws duly enacted by the Texas Legislature.



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¹ See Tex. Rev. Civ. Stat. art. 4512.1 (“Abortion”), previously codified at Tex. Pen. Code art. 1191 (1925) (“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.”); Tex. Rev. Civ. Stat. art. 4512.2 (“Furnishing the means”), previously codified at Tex. Pen. Code art. 1192 (1925) (“Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.”); Tex. Rev. Civ. Stat. art. 4512.3 (“Attempt at abortion”), previously codified at Tex. Pen. Code art. 1193 (1925) (“If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.”); Tex. Rev. Civ. Stat. art. 4512.4 (“Murder in producing abortion”), previously codified at Tex. Pen. Code art. 1194 (1925) (“If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.”); Tex. Rev. Civ. Stat. art. 4512.6 (“By medical advice”), previously codified at Tex. Pen. Code art. 1196 (1925) (“Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.”).

² With one exception: Only the Dallas County District Attorney is currently enjoined from enforcing these statutes.