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A MESSAGE FROM HUMAN COALITION ACTION

Leaders like you in the pro-life movement are passionate and innovative. Thanks to decades of your hard-fought dedication, we are venturing into a new period of our nation's history. We stand together in this moment where the tragic *Roe v. Wade* decision may finally be removed as a stain from our country. Soon, governing authority over life will be returned to where it belongs — the people. You are committed to guiding the laws of your state in protecting lives and promoting the freedom of the most vulnerable among us. Your state has a compelling interest in enacting laws that protect life at every stage — beginning at conception.

Human Coalition Action serves on behalf of children at risk of being aborted and the women and families targeted by the abortion industry. With the partnership of pro-life advocates across the nation, Human Coalition Action works to unify the pro-life movement, mobilize Americans, and advocate for life-affirming policy in the public arena.

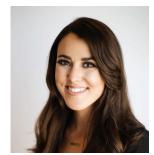
By partnering with Human Coalition, an organization that owns and operates Women's Care Clinics and works with Pregnancy Resource Centers nationwide, Human Coalition Action gains unique insight into the needs of the women and children we serve. By understanding why this population remains so vulnerable to the exploitation of Planned Parenthood and the abortion industry, Human Coalition Action channels its unique expertise to draft and consult on strategic, life-saving legislation for both moms and their children.

Human Coalition Action has a dual-method policy strategy based on understanding abortion supply and demand. First, we aim to alleviate women's demand for abortion by holistically caring for them and addressing the reasons women seek abortion—lack of support. Second, we advocate to decrease abortion supply through developing protections for preborn children with groundbreaking legal theories designed to address abortion trends and enforcement issues.

We humbly desire to serve the movement by sharing the dual-method model legislation in this resource kit. Please feel free to adopt and advance these bills for life. We take no pride in authorship and are here to provide any support or testimony you would like for these initiatives.



Dean NelsonExecutive Director



Chelsey Youman Texas State Director & National Legislative Advisor



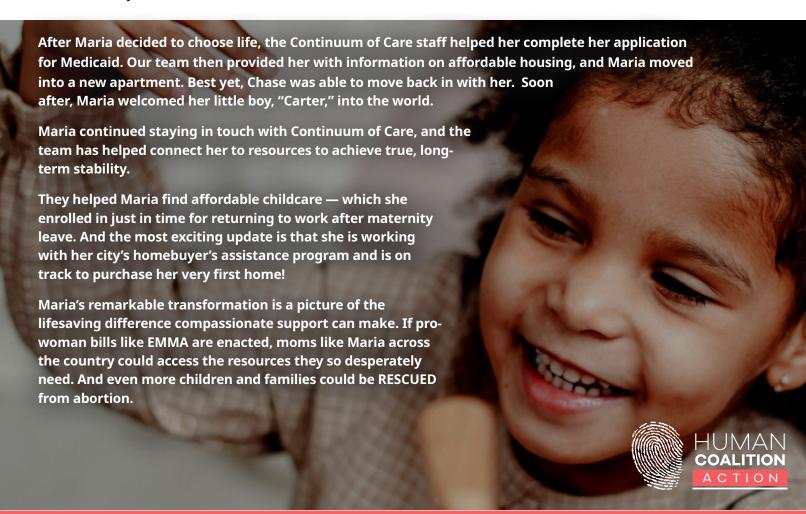
MARIA'S STORY

The Impact of Compassionate Support

When "Maria" discovered she was pregnant, she had just about lost everything. Recently evicted from her apartment and without a stable home, Maria had to send "Chase," her teenage son, to live with her mom in another state. Maria was bouncing back and forth between motels, her car, and even an emergency shelter. She just couldn't see how she could care for another child. So, she began searching for abortion information online. But instead, she found the number for a Human Coalition Telecare Clinic.

Maria called the number and was immediately connected with a compassionate nurse to start counseling and care right over the phone. Throughout the conversation, Maria could sense that the nurse truly cared about helping her. However, even after talking through all her other options, she still believed she had no choice other than abortion. But the telecare clinic nurse never gave up on Maria or her baby. She told Maria about resources she could receive through Continuum of Care and continued to encourage her.

Maria decided to come into a Brick-and-Mortar Women's Clinic for an ultrasound. As she saw her child's tiny arms and legs dancing around, she felt an incredible sense of love. Knowing that a team of experts was ready to help her get back to stability, she decided then and there to choose life!



PRO-LIFE MODEL LEGISLATION

Introduction

In this Pro-Life Model Legislative Kit, you will find five lifesaving bills designed with state-by-state recommendations to implement. Human Coalition Action comprehensively analyzed each state's political makeup, state and federal court composition, and legal landscape. Based on this analysis, we judiciously crafted bill recommendations for each state to adopt from this kit to both care for women and protect children in the womb.

Two bills provide options for advancing comprehensive care for pregnant women in need. Simply caring for this vulnerable population with already existing public and private resources can decrease the demand for abortion between 30—40%. First, the Budget Amendment creates a statewide telecare and in-person care network, or "Continuum of Care program," through a line item in your state's budget. This program serves as an advanced and efficient Alternatives to Abortion program because it allows for statewide telecare assistance for women in need. Second, the Every Mother Matters Act is designed to ensure every woman seeking abortion is aware of public and private resources available in her community.

The remaining three bills in the kit are simple and strategic protections for children in the womb. The Protection at Conception Act, Heartbeat Act, and Human Child Protection Act protect children in the womb from the earliest stages, when a heartbeat is detected, as well as from "abortion destinations" and the chemical abortion pill. While some of these protections are familiar to the pro-life movement, these bills utilize strategic legal enforcement to ensure abortion providers comply with the law.

Abortion regulations are fraught with many enforcement difficulties:

- local District Attorneys and Attorneys General publicly commit to not enforcing abortion laws, even when *Roe v. Wade* is overturned. Most abortion clinics are located in these District Attorneys' jurisdictions;
- abortion providers will continue to enjoin laws as quickly as they are enacted through filing pre-enforcement lawsuits against the state;
- in a post-Roe world, many state and federal courts will continue to interpret laws narrowly to allow abortion; and
- abortion providers and international chemical abortion pill distributors violate current abortion regulations, illegally mailing abortion pills to women.



The model legislation in this kit preempts these enforcement issues by creating a private civil cause of action for wrongful death against abortion providers who violate the law. This prevents abortionists from enjoining the law outright through pre-enforcement challenges against the state. Instead, the bills will be enacted regardless of the makeup of state or federal courts. The premise for enforcement through private causes of action is that without government enforcement, there is no government action to enjoin. In other words, no *Younger* Abstention Doctrine exemption would apply for these bills.

The bills require abortion providers who conduct illegal abortions to assert claims defensively, after being sued. Justice Gorsuch reiterated that litigants are not entitled to pre-enforcement challenges as a matter of right or law in *Whole Women's Health v. Jackson*. He also asserted that most litigants must wait to be sued and assert their rights—including abortion providers. This legal framework presents a strategic legal triumph for children in the womb, overcoming legal challenges pro-lifers faced for 50 years.



STATE	POST-ROE LANDSCAPE	WOMEN'S SERVICES RECOMMENDATION	BILL RECOMMENDATION
Alabama	Pre-Roe statute Complete ban w/ exemptions Constitutional protection	Budget Amendment	Human Child Protection Act
Alaska	No protections State Supreme Court abortion rights opinion	Budget Amendment EMMA	
Arizona	15-week protection Potential pre-Roe statute	Budget Amendment	Heartbeat Act
Arkansas	Pre-Roe statute Trigger protection at conception Constitutional protection	Budget Amendment	Human Child Protection Act
California	Viability protection State Supreme Court abortion rights opinion Statutory abortion rights	Budget Amendment	
Colorado	Viability protection Statutory abortion rights	Budget Amendment	
Connecticut	No protections State Supreme Court abortion rights opinion Statutory abortion rights	Budget Amendment	
Delaware	Viability protection Statutory abortion rights	Budget Amendment	
Florida	15-week protection A2A State Supreme Court abortion rights opinion	EMMA	Heartbeat Act Human Child Protection Act
Georgia	Heartbeat protection A2A	Budget Amendment	Protection at Conception Act Human Child Protection Act



STATE	POST-ROE LANDSCAPE	WOMEN'S SERVICES RECOMMENDATION	BILL RECOMMENDATION
Hawaii	Viability protection Statutory abortion rights	Budget Amendment	
Idaho	Trigger Heartbeat protection	Budget Amendment	
Illinois	Statutory abortion rights Viability protection	Budget Amendment EMMA	
Indiana	Non-discrimination 20-week protection A2A	Budget Amendment EMMA	Protection at Conception Act Heartbeat Act Human Child Protection Act
Iowa	Heartbeat protection State Supreme Court abortion rights opinion	Budget Amendment EMMA	Protection at Conception Act Human Child Protection Act
Kansas	22-week protection State Supreme Court abortion rights opinion	Budget Amendment EMMA	Protection at Conception Act Heartbeat Act
Kentucky	Trigger Heartbeat protection	Budget Amendment	Human Child Protection Act
Louisiana	Trigger Heartbeat protection A2A	Budget Amendment	Human Child Protection Act
Maine	Viability protection Statutory abortion rights	Budget Amendment	
Maryland	Viability protection Statutory abortion rights	Budget Amendment	



STATE	POST-ROE LANDSCAPE	WOMEN'S SERVICES RECOMMENDATION	BILL RECOMMENDATION
Massachusetts	24-week protection Statutory abortion rights Lower state court abortion rights opinion	Budget Amendment	
Michigan	Pre-Roe statute A2A recently vetoed	Budget Amendment	
Minnesota	Viability protection State Supreme Court abortion rights opinion A2A	EMMA	
Mississippi	Pre-Roe statute Trigger heartbeat protection State Supreme Court abortion rights opinion	Budget Amendment	Human Child Protection Act
Missouri	Trigger 8-week protection A2A	Budget Amendment	Human Child Protection Act
Montana	Viability protection State Supreme Court abortion rights opinion	Budget Amendmen EMMA	Protection at Conception Act Heartbeat Act
Nebraska	22-week protection	Budget Amendment EMMA	Heartbeat Act Human Child Protection Act
Nevada	24-week protection Statutory abortion rights	Budget Amendment	
New Hampshire	24-week protection	Budget Amendment EMMA	Heartbeat Act
New Jersey	No protections State Supreme Court abortion rights opinion Statutory abortion rights	Budget Amendment EMMA	HUMAN COALITION

STATE	POST-ROE LANDSCAPE	WOMEN'S SERVICES RECOMMENDATION	BILL RECOMMENDATION
New Mexico	No protections State Supreme Court abortion rights opinion	Budget Amendment	
New York	Viability protections State Supreme Court abortion rights opinion Statutory abortion rights	Budget Amendment	
North Carolina	20-week protection A2A	EMMA	Protection at Conception Act Heartbeat Act
North Dakota	Trigger Heartbeat Act A2A	Budget Amendment	Human Child Protection Act
Ohio	Heartbeat Act A2A	Budget Amendment EMMA	Protection at Conception Act
Oklahoma	Pre-Roe statute Trigger protection at conception Heartbeat Act	Budget Amendment	
Oregon	No Protections	Budget Amendment	
Pennsylvania	24-week protection A2A	Budget Amendment EMMA	
Rhode Island	Viability protection Statutory abortion rights	Budget Amendment	
South Carolina	Heartbeat Act	Budget Amendment EMMA	Protection at Conception Act
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STATE	POST-ROE LANDSCAPE	WOMEN'S SERVICES RECOMMENDATION	BILL RECOMMENDATION
South Dakota	Trigger	Budget Amendment	Human Child Protection Act
Tennessee	Trigger Heartbeat Act Constitutional protection	Budget Amendment	
Texas	Pre-Roe statute Trigger Heartbeat Act A2A	Budget Amendment	Human Child Protection Act
Utah	Trigger Protection at conception	Budget Amendment	
Vermont	No protections State Supreme Court abortion rights opinion Statutory abortion rights	Budget Amendment	
Virginia	Third trimester protection Statutory abortion rights	Budget Amendment EMMA	
Washington	Viability protections Statutory abortion rights	Budget Amendment	
West Virginia	Pre-Roe statute Constitutional protection 22-week protection	Budget Amendment	
Wisconsin	Pre-Roe statute 22-week protection	Budget Amendment EMMA	Heartbeat Act
Wyoming	Trigger	Budget Amendment	



GENERAL MESSAGING GUIDE

Talking Points for Media Use

OUR MISSION

To make abortion unthinkable and unnecessary.

ABOUT HUMAN COALITION ACTION

Human Coalition Action is a coalition of individuals who advocate on behalf of preborn children, moms, and families at all levels of government. Human Coalition Action is focused on building relationships and pursuing the implementation of important pro-life policy. But the true hero of Human Coalition Action is the grassroots, pro-life American, who courageously chooses to move from advocacy for the preborn child to strategic action on their behalf.

SUGGESTED TALKING POINTS

- The child in the womb is a living human being, worthy of dignity and protection. Scientific and medical advances make this clear to see there's evidence of a fetal heartbeat, major organs developing, and brain waves as early as seven weeks.
- All states should enact laws protecting life at every stage beginning at conception. States have a compelling interest and rightful authority in protecting human life in the womb.
- 75% of women seeking abortion say that they'd prefer to parent if their circumstances were different. We've got to help fill their support gap and empower them to choose life. It is imperative that we serve both child and mother.
 - States should support programs that are proven to help women and reduce the rate of abortions.
 - Organizations like Human Coalition and a network of over 2,700 Pregnancy Resource Centers around the country are already hard at work to address the circumstances that lead women to seek abortion.
- Pro-life views are compassionate and just. The pro-abortion views we're seeing are extreme. We are seeing proabortion activists:
 - Celebrate abortions;
 - Push for legalizing abortion until birth and denying protection to the child shortly after birth;
- Planned Parenthood and the abortion industry are out of touch with most Americans, and it's time for states to enact laws that will protect preborn children and their mothers.





BUDGET AMENDMENT BACKGROUNDER

Continuum of Care

PROBLEM:

Seventy-five percent of women seeking an abortion would prefer to parent if their circumstances were different. Abortions are predominantly driven by socioeconomic concerns that preexist a pregnancy. Women equipped with support or resources often decide to keep their children. Communities already provide significant private and public resources to support their needs. Unfortunately, women continue to report unawareness that resources exist to help them and that obtaining support services can be difficult. Women's services are crucial to preventing abortion and saving lives.

PURPOSE:

The Continuum of Care program ("Program") remedies these issues by creating a telecare system of tangible support for pregnant women in need. The Program offers and provides women with immediate personalized support, long-term solutions, and healthy pregnancy benefits through trained licensed professionals. The Program enables a woman seeking abortion to learn about and access Program services when she needs them most. The Program supports mothers and stabilizes families with the goal to empower them from support to independence.

RESULTS:

Care for pregnant women in need reduces the demand for abortion by 30%. This estimate is based on results from similar services provided across the country. The Program also enables a host of benefits for family health and welfare including healthy maternal and infant birth outcomes, childbirth, family formation, and economic self-sufficiency. The Program provides access to prenatal and postpartum care as well as necessities such as employment, childcare, safe or affordable housing, and insurance or Medicaid. All Program care plans are individualized and include paths to independence. Finally, by offering outreach and telecare, women can access assistance more quickly, increasing the likelihood of choosing life before their abortion appointments.

FUNCTION:

The department assigned creates a Continuum of Care program to assist parents of children under two, including unborn, with health and socioeconomic needs. The Program funds outreach efforts to pregnant women and parents in need. It also enables professionals to offer and assist in connecting participants with public and private services in their community. By operating statewide through telecare, women in need receive immediate care no matter where they are. The Program gives a pregnant woman real options and better solutions for whatever she is facing.

CURRENT LAW:

The Women's Right to Know Act (the "Act") requires abortionists to give the pregnant woman a lengthy booklet that includes information about fetal development and a variety of programs with their contact information. Further, abortion clinics providing the booklet possess a financial interest in the abortion occurring. They are not equipped to



address women's socioeconomic needs and publicly object to doing so. Finally, women continue to report unawareness that resources exist to help them and that obtaining support services can also be cumbersome. The Program builds on the foundation of the Act by providing women third-party, interpersonal, and comprehensive care.

KEY ASPECTS OF THE CONTINUUM OF CARE BUDGET AMENDMENT:

- The Continuum of Care budget amendment allocates funding for a Program to 1) reach pregnant women in need and 2) connect them with healthy pregnancy and care plan coordination services.
 - Healthy pregnancy services include access to medical care, mental or behavioral health care, pregnancy support, and information on adoption.
 - Care plan coordination services are individualized care plans for Program participants addressing
 socioeconomic needs such as safe housing, parenting classes, resources, employment, education, child care,
 adoption services, financial needs, addiction or substance abuse treatment, and assistance for abuse or human
 trafficking.
- Program services are available to women seeking abortion, biological parents of unborn children, biological or adoptive parents of a child under two years, and women who terminate their pregnancies.
- The Program allows participants to connect with assistance immediately through a telecare network.
- The budget amendment contains reporting requirements about the types of services women need to support future policy development.

Learn More: <u>HuCoAction.org</u>



BUDGET AMENDMENT

Continuum of Care

[Appropriations Bill Number]
General Appropriations Act
[Session Number] Legislature

ARTICLE [NUMBER] - [STATE HEALTH DEPARTMENT]

SECTION 1. FUNDS FOR CONTINUUM OF CARE FOR CERTAIN PREGNANT WOMEN AND PARENTS.(A) Of the funds appropriated in this act to the [state health department], the sum of [recommended \$350 per abortion in state] in each fiscal year for the Continuum of Care program.

(B) Unexpected Balance Authority within the Biennium. Any unobligated and unexpended balances remaining as of [date], are appropriated to [state health department] for the same purpose for the state fiscal year beginning [date].

SECTION 2. CONTINUUM OF CARE PROGRAM. (A) The [state health department] shall establish a continuum of care program for certain pregnant women and parents, referred to hereafter in this Chapter as the "program".

- (B)(1) The purpose of the program is to facilitate the operation of a statewide telecare support network that provides community outreach, consultations, and care coordination for women who are challenged with unexpected pregnancies.
 - (2) The program shall:
 - (a) encourage healthy childbirth;
 - (b) support childbirth as an alternative to abortion;
 - (c) promote family formation;
 - (d) assist parents in establishing successful parenting techniques; and
 - (e) increase the economic self-sufficiency of families.
- (C) The program shall utilize a statewide telecare support network to facilitate Section 3. The [state health department] shall provide in rule for the functions and administration of the telecare support network.
- (D) The Department shall finance the program with funds appropriated to it by the Legislature for operation of the program.

SECTION 3. SERVICES AND RESOURCES; ELIGIBILITY.(A) The program shall provide direct services, supports, social services case management, and referrals to biological parents of unborn children and biological or adoptive parents of children under the age of two years.

- (B) The program shall include:
- (1) outreach to at-risk populations eligible for the program;

- (2) licensed nurses, community health workers, or other individuals of equivalent expertise to:
- (a) assess and evaluate program participant needs related to pregnancy or parenting;
- (b) assist program participants in obtaining medical and mental health care; and
- (c) provide medically accurate, pregnancy-related medical information to program participants.
- (3) licensed social workers, nurses, community health workers, licensed professional counselors, or other individuals of equivalent experience to:
 - (a) develop a care plan, resources, and supports for program participants to address identified needs;
- (b) refer program participants to local resources including, without limitation, state and federal benefits programs and local charitable organizations;
 - (c) assist program participants in applying for state and federal benefits programs; and
 - (d) assist program participants in accomplishing elements of the care plan.
 - (C) Any person and any of its subcontractors or agents providing services under this chapter shall:
- (1) maintain the confidentiality of information obtained while performing program services, including complying with [state medical records privacy law];
 - (2) not provide or prescribe abortion services or abortion aid;
- (3) not directly or indirectly promote, refer for, facilitate, or assist women in obtaining abortion services or abortion aid;
 - (4) not own, operate, or affiliate with an abortion provider;
- (5) not own, operate, or affiliate with a person who directly or indirectly promotes, refers for, facilitates, or assists women in obtaining an abortion;
 - (6) not employ an individual who has performed or induced an abortion in the last two years;
- (7) not have a director, board member, officer, volunteer, or employee who performed or induced an abortion in the last two years or who serves in any of these roles for an entity described in subdivisions (1) and (2).
- (E) Any program participant who terminates a pregnancy shall be eligible to continue receiving services through the program for a period of six months from the date of the pregnancy termination.

SECTION 4. REPORTING. (A) On or before [reporting date], and annually thereafter, the Department shall submit to the [preferred state oversight entity or committee] on the status and operation of the program. Each report required by this section shall include:

- (1) the number of individuals served by the program, and for the individuals served; and
- (2) the types of referrals and services provided to program participants.
- (B) Information provided to the Department shall not include any personally identifying information regarding program participants.

SECTION 5. RULEMAKING. (A) The Department shall promulgate in accordance with the [state Administrative Procedure Act] all such rules as are necessary to implement the provisions of this Chapter.



EMMA BACKGROUNDER

Every Mother Matters Act

PROBLEM:

Seventy-five percent of women seeking an abortion would prefer to parent if their circumstances were different. Abortions are predominantly driven by socioeconomic concerns that preexist a pregnancy. Women equipped with support or resources often decide to keep their children. Communities already provide significant private and public resources to support their needs. And current informed consent requirements mandate abortion providers—who have a financial interest in terminating pregnancies—to give women written information about support programs in their community. Unfortunately, women continue to report unawareness that resources exist to help them and that obtaining support services can be difficult.

PURPOSE:

The Every Mother Matters Act ("EMMA") remedies these issues by creating a system of tangible support for pregnant women in need—the Pregnancy Launch Program ("Program"). The Program offers and provides women with immediate personalized support, long-term solutions, and healthy pregnancy benefits through trained licensed professionals. EMMA ensures each woman seeking abortion receives a meaningful opportunity to learn about and access these Program services when she needs them most. The Program supports mothers and stabilizes families with the goal to empower them from support to independence.

RESULTS:

EMMA is estimated to reduce the demand for abortion by 30% by simply offering support for women seeking abortion. This projection is based on results from similar services provided across the country. EMMA also enables a host of benefits for family health and welfare. The bill provides access to prenatal and postpartum care, human trafficking and abuse assistance, and access to necessities such as employment, childcare, safe or affordable housing, and insurance or Medicaid. All Program care plans are individualized and include paths to independence.

FUNCTION:

The Department assigned creates a Pregnancy Launch Program to assist parents of children under two, including unborn, with health and socioeconomic needs. Before obtaining an abortion, a woman receives a free "resource access offer" from a trained, third-party professional. The professional explains public and private services available to the woman and offers to connect her directly with them. This offer is provided through a brief phone call to a toll-free phone number. If the woman accepts, EMMA supports extensive follow-up services for two years, regardless of her pregnancy outcome. EMMA gives a pregnant woman real options and better solutions for whatever she is facing.

CURRENT LAW:

The Women's Right to Know Act (the "Act"), passed in most Republican-controlled states, recognizes the need to address the challenges pregnant women face to alleviate their demand for abortion.

The Act requires abortionists to give the pregnant woman a lengthy booklet that includes information about fetal development and a variety of programs with their

ACTION

information. Further, abortion clinics providing the booklet possess a financial interest in the abortion occurring. They are not equipped to address women's socioeconomic needs and publicly object to doing so. Finally, women continue to report unawareness that resources exist to help them and that obtaining support services can also be cumbersome. EMMA builds on the foundation of the Act by providing women third-party, interpersonal, and comprehensive care.

CONSTITUTIONALITY:

Multiple state attorneys general offices and other key legal entities, including Human Coalition Action, reviewed EMMA and consider it constitutional and legally defensible. The bill only requires a brief phone call that immediately connects the pregnant woman with a resource assistance offer. She may choose to disclose no information at all. EMMA ensures the call can be accomplished within the state's current mandatory wait period. Finally, obtaining services or assistance is entirely voluntary.

KEY ASPECTS OF THE BILL:

- EMMA creates a Pregnancy Launch Program to provide 1) healthy pregnancy program; and 2) care plan coordination services and connect women in need with community resources.
 - Healthy pregnancy services include access to medical care, mental or behavioral health care, pregnancy support, and information on adoption.
 - Care plan coordination services are individualized care plans for Program Participants addressing socioeconomic needs such as safe housing, parenting classes, resources, employment, education, child care, adoption services, financial needs, addiction or substance abuse treatment, and assistance for abuse or human trafficking.
- Pregnancy Launch Program services are available to women seeking abortion, biological parents of unborn children, biological or adoptive parents of a child under two years, parents or guardians of minors with a child under two, and women who terminate their pregnancies.
- EMMA allows every woman seeking an abortion to receive a resource access offer by calling a toll-free number.
 - The resource access offer informs the pregnant woman of help available through the Pregnancy Launch Program.
 - The call allows for an opportunity to screen for human trafficking and abuse.
 - The call can be completed quickly, during a state's existing wait time.
 - The woman may participate in further support programs for two years if she chooses.
 - The woman may disclose only as much information as she chooses; her confidential information is legally protected.
- EMMA creates a process by which a physician must verify the resource access offer was given before performing an abortion.
- EMMA contains robust enforcement mechanisms for abortion providers.
- The bill contains reporting requirements about the types of services women need to support future policy development.

Learn More: <u>HuCoAction.org</u>



EMMA MODEL LEGISLATION

Draft Bill

Relating to support services for pregnancy, parenting, and adoption; to offer public and private resource assistance for women prior to abortion including abuse, assault, and human trafficking assistance; authorizing civil right of action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [state]:

SECTION 1. TITLE. This act shall be known as the Every Mother Matters Act.

SECTION 2. DEFINITIONS.

- (1) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:
 - (A) the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception;
 - (B) an act intended to save the life or preserve the health of the unborn child;
 - (C) removing a dead unborn child caused by spontaneous abortion; or
 - (D) treatment for an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus
- (2) "Abortion Provider" means a person who performs, prescribes, or administers abortion including at a facility where abortion is performed or administered, regardless of licensure.
 - (3) "Abuse" has the same meaning as in [refer to state penal code].
 - (4) "Agency" means an entity that contracts with the Department to provide the services required by this act.
 - (5) "Assault" means acts or offenses described in [refer to state penal code].
 - (6) "Care Agent" means a person employed by an agency to perform the services required by this act.
 - (7) "Coercion" means the acts or offenses described in [refer to state penal code].
 - (8) "Department" means the [state Department responsible for implementing chapter].
 - (9) "Human Trafficking" means the acts or offenses described in [refer to state penal code].
- (10) "Medical Emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.
 - (11) "Neglect" has the same meaning as in [refer to state penal code].

- (12) "Participant" means an individual receiving Pregnancy Launch Program Services as provided in this act.
- (13) "Sexual Abuse" means the acts or offenses described in [refer to state penal code].

SECTION 3. PURPOSE. (A) The Pregnancy Launch Program shall:

- (1) encourage healthy childbirth;
- (2) support childbirth as an alternative to abortion;
- (3) promote family formation;
- (4) assist parents in establishing successful parenting techniques; and
- (5) increase families' economic self-sufficiency.

SECTION 4. THE PREGNANCY LAUNCH PROGRAM. (A) The Pregnancy Launch Program includes but is not limited to:

- (1) direct-to-participant marketing within the state;
- (2) licensed nurses, community health workers, or other individuals of equivalent expertise offering healthy pregnancy program services to Pregnancy Launch Program participants including:
 - (a) assistance assessing and evaluating needs related to pregnancy or parenting;
 - (b) medically accurate pregnancy-related information;
 - (c) assistance obtaining obstetric care, primary care, mental health or behavioral health counseling, and postpartum care;
 - (d) pregnancy-related support, including the pregnant woman's family's well-being and available support services; and
 - (e) information on adoption.
- (3) licensed social workers, nurses, community health workers, licensed professional counselors, or other individuals of equivalent experience offering care plan coordination services to Pregnancy Launch Program participants including:
 - (a) assistance for needs related to the pregnancy or parent's ability to care for his or her unborn child;
 - (b) developing a care plan of resources and support to address participant needs;
 - (c) referrals to local resources, including state and federal benefits programs and local charitable organizations;
 - (d) assistance applying for state and federal benefits programs;
 - (e) assistance accomplishing elements of the care plan;
 - (f) services related to postpartum depression and related referrals;
 - (g) assistance obtaining pediatric care and postpartum care;
 - (h) assistance obtaining substance abuse treatment and alcohol abuse treatment;
 - (i) education on available public and private resources to address the participant's socioeconomic needs;
 - (j) social services or assistance in obtaining social services related to education, professional certification, housing, employment, resume development, childcare, adoption services, financial needs, substance abuse, and health benefits plan coverage;

- (k) assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and
- (I) assistance obtaining mental health or behavioral counseling.
- (4) notwithstanding any law to the contrary, healthy pregnancy program services and care plan coordination services of the Pregnancy Launch Program may be provided in person through existing facilities or remotely through a telephonic system or other comparable, synchronous direct audio or video technologies; and
- (5) administrative support and expenses for the development or ongoing support of the Pregnancy Launch Program.

SECTION 5. PARTICIPANT ELIGIBILITY. (A) The Pregnancy Launch Program shall be available to:

- (1) the biological parent of an unborn child;
- (2) the biological or adoptive parent of a child under two years of age;
- (3) a pregnant woman seeking to obtain an abortion in this state;
- (4) a parent or legal guardian of a minor residing in this state who is pregnant or has a child under the age of two years; and
 - (5) participants whose pregnancies are terminated for up to six months after the date of termination.

SECTION 6. AGENCY REPORTING. (A) Each agency providing Pregnancy Launch Program services shall record and report monthly to the Department:

- (1) the number of individuals who initiate care plan coordination;
- (2) the number of individuals who initiate healthy pregnancy program services;
- (3) the number individuals receiving support for:
 - (a) education:
 - (b) training for a professional certification;
 - (c) housing;
 - (d) employment;
 - (e) resume development;
 - (f) child care;
 - (g) adoption services
 - (h) financial needs;
 - (i) substance abuse; and
 - (j) health benefit coverage.
- (4) the number of individuals needing assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking;
 - (5) the number of women needing assistance for postpartum depression and related referrals;
- (6) the number of pregnant women needing assistance obtaining obstetric care, pediatric care, postpartum care, or mental health or behavioral counseling; and

(7) the number of pregnant women receiving assistance or education for issues related to their health, unborn children's health, pregnancy, abortion, fetal development, or birth.

SECTION 7. RESOURCE ACCESS OFFER. (A) An abortion provider shall not perform or induce an abortion unless he or she verifies that the pregnant woman received a resource access offer.

- (B) A resource access offer under subsection (A) shall:
 - (1) inform the pregnant woman of and make available:
 - (a) free healthy pregnancy program services offered under Section 4; and
 - (b) free care plan coordination services offered under Section 4.
- (2) offer education on public and private resources available to address the socioeconomic needs of the pregnant woman or the biological father of the unborn child;
 - (3) offer screening and assistance for abuse, assault, sexual assault, neglect, coercion, and human trafficking; and
 - (4) offer medically accurate information from the [state Woman's Right to Know Act].
 - (C) The pregnant woman:
- (1) neither required to accept nor initiate any services offered through the resource access offer in order to obtain an abortion;
 - (2) may decline services under this chapter at any time; and
 - (3) is not required to provide any information to the care agent, agency, or Department.
 - (D) The resource access offer shall be provided at the expense of the state at no cost to the woman.
 - (E) This section does not apply in the case of a medical emergency. In a medical emergency, an abortion provider shall:
- (1) include in the woman's medical records a statement signed by the physician certifying the nature of the medical emergency; and
- (2) not later than the 30th day after the abortion, certify to the Department the specific medical condition that constituted the emergency.
 - (F) This section shall become operative 18 months following the effective date of this act.

SECTION 8. DEPARTMENT REQUIREMENTS.(A) Not later than nine months following the effective date of this act, the Department shall:

- (1) contract with one or more agencies sufficient to ensure that every woman seeking an abortion in [state] receives a resource access offer and the opportunity to receive Pregnancy Launch Program services in accordance with Section 4; and
- (2) only contract with agencies that are capable of offering by telephonic means, other comparable synchronous direct audio or video technology, or in person:
 - (a) resource access offers;
 - (b) healthy pregnancy program services; and
 - (c) care plan coordination.

SECTION 9. AGENCY REQUIREMENTS. (A) An agency and any of its subcontractors or agents providing services under this chapter shall not:

- (1) provide or prescribe abortion services or abortion aid;
- (2) directly or indirectly promote, refer for, facilitate, or assist women in obtaining abortion services or abortion aid;
- (3) own, operate, or affiliate with an abortion provider;
- (4) own, operate, or affiliate with a person who directly or indirectly promotes, refers for, facilitates, or assists women in obtaining an abortion;
 - (5) employ an individual who has performed or induced an abortion in the last two years;
- (6) have a director, board member, officer, volunteer, or employee who performed or induced an abortion in the last two years or who serves in any of these roles for an entity described in subdivisions (1) and (2).
 - (B) An agency and any of its subcontractors or agents providing services under Sections 4 through 7 shall:
 - (1) maintain the confidentiality of information obtained while performing services under this chapter, including complying with [state medical records privacy law]; and
 - (2) complete a human trafficking training program in order to recognize signs of human trafficking and provide assistance to that individual.

SECTION 10. PROGRAM ADMINISTRATION. (A) The Department shall:

- (1) annually assign an agency's percentage of resource access offers based on the agency's number of participants initiating Pregnancy Launch Program services;
- (2) establish a single toll-free number by which all pregnant women seeking an abortion in [state] may immediately receive a resource access offer;
 - (3) develop and maintain a secure process for completing the verification requirements of Section 11, which shall:
 - (a) generate a confirmation number devoid of personally identifying information;
 - (b) allow abortion providers to verify the completion of a resource access offer prior to performing or inducing an abortion in accordance with Section 11; and
 - (c) confirm completion of the resource access offer by 11:59 p.m. on the day it was made to the pregnant woman.
 - (4) adopt rules for the implementation of this chapter.
 - (B) The Department shall not transmit any information to agencies and abortion providers regarding an agency or abortion provider's identity or location.

SECTION 11. VERIFICATION. (A) Before accepting any payment for abortion-related services and before abortion services begin, the abortion provider, or their agent, shall:

- (1) verify through the Department's secure confirmation process that the woman received a resource access offer from an agency;
- (2) record the confirmation number according to the Department's secure verification process in the woman's medical record; and

- (3) take any other steps required by the Department to complete the secure confirmation process.
 - (B) This section shall become operative 18 months following the effective date of this act.
- SECTION 12. ENFORCEMENT. (A) In order to enforce compliance with this act, the Department shall:
 - (1) at least once a year, audit 10 percent of each abortion provider's medical records at random and unannounced times;
 - (2) determine for each audited medical record whether the abortion provider fully complied with Section 11;
 - (3) upon finding that the abortion provider failed to comply with Section 11, audit all the abortion provider's medical records; and
 - (4) report audit results to [state medical licensing board] in order to revoke an abortion provider's medical license for failure to comply.
- (B) Any abortion provider who fails to comply with Section 11 shall:
 - (1) be jointly and severally liable for a five thousand dollar (\$5,000) fine for each abortion performed or induced in violation of Section 11: and
 - (2) have his or her medical license revoked by [state medical licensing board].
- (C)The Attorney General or any district attorney may file an action to recover a civil penalty assessed under this section and, if any civil penalty is recovered, shall also recover attorney fees and costs incurred in bringing the action.
 - (D) Any person has standing to bring and may bring a civil action against an abortion provider who:
 - (1) performs or induces an abortion in violation of any provision or requirement of this chapter;
 - (2) knowingly engages in conduct that aids or abets an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of any provision or requirement of this chapter, regardless of whether the person or entity knew or should have known that the abortion would be performed or induced in violation of this chapter; or
 - (3) intends to engage in the conduct described by subsections 12(D)(1) or 12(D)(2).
 - (E) If a claimant prevails in an action brought under this section, the court shall award:
 - (1) injunctive relief sufficient to prevent the defendant from violating this chapter or engaging in acts that aid or abet violations of this chapter;
 - (2) statutory damages in an amount of not less than \$5,000 for each abortion that the defendant performed or induced or aided or abetted in violation of this chapter;
 - (3) nominal and compensatory damages if the plaintiff has suffered harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress; and
 - (4) costs and attorneys' fees.
- (F) A court may not award relief under Subsection 12(E) in response to a violation of Subsection 11 if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (12)(E) in another action for that particular violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.
 - (G) Notwithstanding any other law, the following are not a defense to an action brought under this section:

- (1) ignorance or mistake of law;
- (2) a defendant's belief that the requirements or provisions of this chapter are unconstitutional or were unconstitutional;
- (3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the defendant violated Section 11:
- (4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
- (5) non-mutual issue preclusion or non-mutual claim preclusion;
- (6) the consent of the unborn child's mother to the abortion; or
- (7) any claim that the enforcement of this chapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties.
- (H) It is an affirmative defense if a person or entity sued under Subsection 12(E)(2) or (E)(3) reasonably believed, after conducting a reasonable investigation, that the abortion provider would comply with requirements of this chapter.
 - (1) The defendant has the burden of proving an affirmative defense under Subsection (H) by a preponderance of the evidence.
- (I) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.
 - (J) This section shall become operative 18 months following the effective date of this act.

SECTION 13. CONSTRUCTION. (A) Nothing in this chapter shall be construed to:

- (1) create or recognize a right to abortion;
- (2) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this chapter;
 - (3) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion;
 - (4) restrict a political subdivision from regulating or prohibiting abortion in any manner;
- (5) violate any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the Supreme Court of the United States' interpretation of the Fourteenth Amendment of the United States Constitution, or by [state Constitution]; or
- (6) prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this chapter as a defense to any action, claim, or counterclaim brought against that litigant.

SECTION 14. VENUE.(A)Notwithstanding any other provision of law to the contrary, a civil action brought under Section 12 may be brought in:

- (1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;
- (3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

- (4) the county of residence for the claimant if the claimant is a natural person residing in this state.
 - (B) If a civil action is brought under Section 12 in any one of the venues described by Subsection (A), then the action may not be transferred to a different venue without the written consent of all parties.

SECTION 15. SOVEREIGN, GOVERNMENTAL and OFFICIAL IMMUNITY. (A) Notwithstanding any other law, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under Section 12, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the *United States in Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by section 5 of the Fourteenth Amendment.

- (B) Notwithstanding any other provision of law to the contrary, the immunities conferred by Subsection (A) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.
- (C) Notwithstanding any other provision of law to the contrary, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (A) unless it expressly waives or abrogates immunity with specific reference to this section.
- (D) Notwithstanding any other provision of law to the contrary, no attorney representing the state, its political subdivisions, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (A) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.
- (E) Notwithstanding any other provision of law to the contrary, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this chapter invalid or unconstitutional, or that would restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under Section 12, and no such relief may be awarded by any court of this state.
- (F) Notwithstanding any other provision of law to the contrary, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (A), or the jurisdictional limitations imposed by Subsection (E), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.
- (G) Notwithstanding any other provision of law to the contrary, any writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing

a civil action brought under Section 12 shall be regarded as a legal nullity and a violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.

- (H) Notwithstanding any other provision of law to the contrary, any person who sues and seeks any writ, injunction, or declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing a civil action brought under Section 12, shall pay the costs and attorneys' fees of the person sued. A person may bring a civil action to recover these costs and attorneys' fees in state or federal court. It shall not be defense to a civil action brought under this chapter that:
 - (1) the plaintiff failed to seek recovery of costs or attorneys' fees in the underlying action;
 - (2) the court in the underlying action declined to recognize or enforce the requirements of this Section; or
 - (3) the court in the underlying action held that any provisions of this Section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 16. SEVERABILITY. (A) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this subchapter, and every application of the provisions in this subchapter to every person, group of persons, or circumstances, are severable from each other.

- (B) If any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be invalid, preeempted, or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this chapter, including preservation of the Pregnancy Launch Program, shall be severed from any applications that a court finds to be invalid, preeempted, unconstitutional, and the valid applications shall remain in force, because it is the legislature's intent and priority that every valid application be allowed to stand alone.
- (C) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this subchapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this subchapter were to be declared invalid, preeempted, or unconstitutional.
- (D) If any provision of this subchapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).
- (E) No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:
 - (1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the [name of state] Constitution or United States Constitution;

- (2) is not a formal amendment of the language in a statute; and
- (3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.
- (F) If any state or federal court disregards any of the severability requirements in Subsections (A), (B), (C), (D), or (E), and declares or finds any provision of this subchapter facially unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially unconstitutional is vacated or overruled.

SECTION 17. EFFECTIVE DATE. This act shall become effective on the first day of the first month following its passage and approval by the Governor, or its otherwise becoming law.



PROTECTION AT CONCEPTION ACT BACKGROUNDER

Preborn Advocacy

PROBLEM:

In the wake of *Roe v. Wade*, states have been unable to protect children in the womb from abortion before viability. Despite traditional legal roadblocks, each state should ensure all human life is protected. According to the Center for Disease Control, 80% of abortions are performed before nine weeks gestation. Likewise, the Texas Heartbeat Act successfully protects children in the womb with a heartbeat. Yet estimated abortions declined in the state by only 60%. Thousands of legal abortions are still performed every month in the state. Children in the womb are human and alive from fertilization. 95% of secular biologists agree life begins at conception. The littlest and most vulnerable humans need to be protected from death by abortion.

PURPOSE:

The Protection at Conception Act ("Act") shields human life after fertilization from abortion. The bill is enforced through a private civil cause of action to overcome the significant enforcement barriers pro-life bills typically face. It extends lifesaving measures to protect all life because the child in the womb is a human being from the moment of conception.

RESULTS:

As an example, the Texas Heartbeat Act, in effect since September 2021, resulted in 60% fewer abortions in the first three months it was enacted. It also survived multiple court challenges before the U.S. and Texas Supreme Courts. The Protection at Conception Act builds on this lifesaving effect by guaranteeing preborn children of all ages are safe. While women will likely obtain abortions by traveling out of state or through the mailing the chemical abortion pill, this Act will considerably protect the lives of children in the womb.

FUNCTION:

The Act prohibits anyone from performing or aiding and abetting an abortion, except in a medical emergency. The Act is enforced through private civil actions. Individuals, other than state officials, may bring civil actions against anyone who performs or induces; aids or abets; or intends to perform or assist an illegal abortion. Women who obtain an abortion are exempt from liability.

CONSTITUTIONALITY:

By returning abortion to the states in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court allows states to protect human life once again under a rational basis review standard. The state has a rational (arguably compelling) interest in protecting children from death by abortion as applied to the Act.

Notably, the Texas Heartbeat Act successfully overcame 50 years of enforcement and compliance challenges by surviving multiple court challenges–including at the U.S. Supreme Court and Texas Supreme Court. In *Whole Women's Health v. Jackson*, the



Supreme Court upheld private causes of action as a lawful enforcement mechanism in the abortion context, as it is commonplace in other areas of the law. This Act, therefore, provides for similar enforcement. By allowing Plaintiffs to sue abortion providers, the Act strategically overcomes enforcement and compliance roadblocks unique to abortion law.

Abortion protections are fraught with enforcement difficulties:

- District Attorneys and Attorneys General publicly commit to not enforcing abortion laws, even when *Roe v. Wade* is overturned. Most abortion clinics are located in these District Attorneys' jurisdictions;
- abortion providers enjoin laws as quickly as they are enacted through pre-enforcement challenges against the state;
- in a post-Roe world, many state and federal courts will continue to interpret laws narrowly to allow abortion; and
- abortion providers and chemical abortion pill distributors violate current abortion regulations, illegally mailing abortion pills to women.

The Act closes these enforcement gaps. By creating a private civil cause of action against abortion providers, they cannot enjoin the law through a pre-enforcement challenge against the state. Instead, the bill will be enacted regardless of the makeup of state or federal courts. The premise is that without government enforcement, there is no government action to enjoin. In other words, no *Younger Abstention Doctrine* exemption applies to the Act. Further, Texas proves abortion providers are reticent to incur civil liability because they complied with the Heartbeat Act without a single lawsuit being filed.

Under the Act, abortion providers illegally conducting abortions must litigate on the same basis as others by asserting their "rights" defensively, after being sued, rather than enjoining the law through a pre-enforcement challenge. The Supreme Court upheld this method in *Whole Women's Health v. Jackson* when Justice Gorsuch reiterated that the "Court has never recognized an unqualified right to pre-enforcement review of constitutional claims in federal court." 142 S. Ct. 522, 537–38 (2021). He also asserted that most litigants must wait to be sued and assert their rights—including abortion providers.

This legal framework withstood Supreme Court review and successfully produced compliance. It presents a strategic legal triumph for children in the womb, overcoming challenges pro-life protections faced for 50 years.

Learn More: <u>HuCoAction.org</u>



PROTECTION AT CONCEPTION ACT

Unborn Advocacy

[Appropriations Bill Number]
General Appropriations Act
[Session Number] Legislature

ARTICLE [NUMBER] - [STATE HEALTH DEPARTMENT]

AN ACT

Relating to protecting human life from abortion; authorizing a private civil right of act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [STATE]:

SECTION 1. This Act shall be known as the [state] Protection at Conception Act.

SECTION 2. Chapter [number], [state abortion regulation code], is amended by adding Subchapter [number] to read as follows:

SECTION 3. DEFINITIONS. As used in this subchapter:

- (1) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:
 - (A) the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception;
 - (B) an act intended to save the life or preserve the health of the unborn child;
 - (C) removing a dead unborn child caused by spontaneous abortion; or
 - (D) treatment for an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.
 - (2) "Fertilization" means the fusion of a human spermatozoon with a human ovum;
- (3) "Medical emergency" means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;
 - (4) "Unborn child" means an individual organism of the species Homo sapiens in any stage of gestation from

fertilization until live birth; and

(5) "Woman" and "women" include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus, regardless of any gender identity that the person attempts to assert or claim.

SECTION 4. PROHIBITION. (A) A person shall not knowingly perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

(B) This section does not authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child, or subject a woman to any civil liability resulting from the death of her own unborn child.

SECTION 5. EXEMPTION FOR PREEMPTION AND INTERGOVERNMENTAL IMMUNITY. The prohibition in Section 4 does not apply to an abortion performed at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity.

SECTION 6. LIMITATIONS ON PUBLIC ENFORCEMENT. Notwithstanding any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 7. No direct or indirect enforcement of this subchapter may be taken or threatened by the state, a political subdivision, a district or county attorney, or any executive or administrative officer or employee of this state or a political subdivision against any person or entity, in any manner whatsoever, except as provided in Section 7, and no violation of this subchapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 7, PROVIDED, that this section does not preclude enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this subchapter.

SECTION 7. CIVIL LIABILITY. (A) Any person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

- (1) performs or induces an abortion in violation of any provision or requirement of this subchapter;
- (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of any provision or requirement of this subchapter, regardless of whether the person or entity knew or should have known that the abortion would be performed or induced in violation of this subchapter; or
 - (3) intends to engage in the conduct described by Subsections (A)(1) or (A)(2).
 - (B) If a claimant prevails in an action brought under this section, the court shall award:
 - (1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;
 - (2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in

violation of this subchapter that the defendant aided or abetted;

- (3) nominal and compensatory damages if the plaintiff has suffered harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress; and
- (4) costs and attorney's fees.
- (C) Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(2) or (B)(4) in response to a violation of Subsection (A)(1) or (A)(2) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (A)(2) in another action for that particular violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.
- (D) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.
- (E) Notwithstanding any other law, the following are not a defense to an action brought under this section:
 - (1) ignorance or mistake of law;
 - (2) a defendant's belief that the requirements or provisions of this subchapter are unconstitutional or were unconstitutional;
 - (3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the defendant violated Subsection (A);
 - (4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
 - (5) non-mutual issue preclusion or non-mutual claim preclusion;
 - (6) the consent of the unborn child's mother to the abortion; or
 - (7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 8.
- (F)(1) It is an affirmative defense if a person or entity sued under Subsection (A)(2) or (A)(3) reasonably believed, after conducting a reasonable investigation, that the individuals and organizations involved with performing or facilitating the abortion would comply with every requirement and provision of this subchapter;
 - (2) The defendant has the burden of proving an affirmative defense under Subsection (F)(1) by a preponderance of the evidence.
- (G) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by [state constitution's free-speech provision] of the [name of state] Constitution.
- (H)(1) Notwithstanding any other law, neither the state, nor any of its political subdivisions, nor any district or county attorney, nor any executive or administrative officer or employee of this state or a political subdivision may:
 - (a) act in concert or participation with anyone who brings suit under this section;
 - (b) establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;

- (c) make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or
- (d) intervene in any action brought under this section.
- (2) This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any other provision of subsection (H)(1).
 - (I)(1) Notwithstanding any other law, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the plaintiff's claim that the defendant violated Subsection (A) is frivolous, malicious, or brought in bad faith.
 - (2) A court may not find that an action brought under this section is frivolous, malicious, or brought in bad faith within the meaning of Subsection (I)(1) if the plaintiff:
 - (a) reasonably believed that the defendant performed or induced an abortion in violation of any requirement or provision of this subchapter, engaged in conduct that aided or abetted the performance or inducement of such an abortion, or intended to engage in any such conduct, regardless of whether a previous court decision declared invalid or unconstitutional a requirement or provision of this subchapter or declared the defendant's behavior protected by the state or federal constitutions or by federal law; or
 - (b) brings suit to seek the overruling of any previous court decision that had pronounced unconstitutional a requirement or provision of this subchapter, or any other law that regulates or restricts abortion, or that declared the defendant's behavior protected by the state or federal constitutions or by federal law.
- (J) Notwithstanding any other law, a civil action under this section shall not be subject to any provision of [the state's anti-SLAPP law, if it has one], and shall not be subject to any provision of [the state's Religious Freedom Restoration Act, if it has one].
 - (K) Notwithstanding any other law, a civil action under this section may not be brought:
 - (1) against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this subchapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this subchapter;
 - (2) against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;
 - (3) against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or
 - (4) by any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or incest, or by anyone who acts in concert or participation with such a person.

SECTION 8. CIVIL LIABILITY: DEFENSES. (A) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the defendant's personal statutory or constitutional rights as a defense to liability under Section 7, and a court may not award relief under Section 7 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

(B) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision of this subchapter as a defense to liability under Section 7.

SECTION 9. CIVIL LIABILITY: VENUE. (A) Notwithstanding any other law, a civil action brought under Section 7 may be brought in:

- (1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;
- (3) the county of the principal office in this state of any one of the defendants that is not a natural person; or
- (4) the county of residence for the claimant if the claimant is a natural person residing in this state.
- (B) If a civil action is brought under Section 7 in any one of the venues described by Subsection (A), the action may not be transferred to a different venue without the written consent of all parties.

SECTION 10. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED; LIMITS ON JURISDICTION. (A) Notwithstanding any other law, the state shall have sovereign immunity, each of its political subdivisions shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity as well as sovereign or governmental immunity, as appropriate, in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this subchapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this subchapter, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States.

- (B) Notwithstanding any other law, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (A) unless it expressly waives or abrogates immunity with specific reference to this section.
- (C) Notwithstanding any other law, no attorney representing the state, its political subdivisions, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (A) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity.
- (D) Notwithstanding any other law, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would prevent the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this subchapter, or from filing a civil action under this subchapter.
- (E) Nothing in this section or subchapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this subchapter as a defense to any action, claim, or counterclaim brought against that litigant.

SECTION 11. SEVERABILITY. (A) Mindful of *Leavitt v. Jane* L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word in this subchapter, and every application of the provisions in this

subchapter to every person, group of persons, or circumstances, are severable from each other.

(B) It is the intent of the Legislature that if any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be invalid, preeempted, or unconstitutional then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this subchapter shall be severed from any applications that a court finds to be invalid, preeempted, or unconstitutional and the valid applications shall remain in force, because it is the Legislature's intent and priority that every valid application be allowed to stand alone.

(C) The Legislature further declares that it would have enacted this subchapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this subchapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this subchapter were to be declared invalid, preeempted, or unconstitutional.

(D) If any provision of this subchapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).

(E) No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision.





THE HEARTBEAT ACT BACKGROUNDER

Preborn Protection

PROBLEM:

In the wake of *Roe v. Wade*, states have been unable to protect children in the womb from abortion before viability. Yet unborn children are human and alive. Despite traditional legal roadblocks, each state should take steps to protect as many human lives as possible from death by abortion. According to the Center for Disease Control, 80% of abortions are performed before nine weeks gestation. For states that are unable to protect children from fertilization, the Heartbeat Act would be a meaningful place to start. The littlest and most vulnerable humans need protection.

PURPOSE:

The Heartbeat Act ("Act") protects preborn children after their fetal heartbeats are detected, which occurs between 5 ½ and 8 weeks gestation. The Act is enforceable regardless of a state's federal or state court makeup. The bill is enforced through private civil causes of action to overcome the significant enforcement barriers pro-life bills typically face. And it protects far more children than later-term abortion protections currently on the books.

RESULTS:

As the most accurate example, the Texas Heartbeat Act successfully protects children in the womb with a heartbeat. Abortions declined by 60% in the state after enactment. While thousands of legal abortions are still performed every month in the state, protecting children with a heartbeat has been proven to save lives. The Act and its enforcement mechanism also survived multiple court challenges before the U.S. and Texas Supreme Courts.

FUNCTION:

The Act prohibits anyone from performing an abortion after detecting a fetal heartbeat, except in the case of a medical emergency. It is enforced exclusively through private civil actions. Individuals, other than state officials, may bring a civil cause of action against anyone who performs or induces; aids or abets; or intends to perform or assist an illegal abortion. Women who obtain an abortion are exempt from liability.

CONSTITUTIONALITY:

By returning abortion to the states in *Dobbs v. Jackson Women's Health Organization*, the Supreme Court allows states to protect human life once again under a rational basis review standard. The state has a rational (arguably compelling) interest in protecting children from death by abortion as applied to the Act.

ACTION

Notably, the Texas Heartbeat Act successfully overcame 50 years of enforcement and compliance challenges by surviving multiple court challenges–including at the U.S. Supreme Court and Texas Supreme Court. In *Whole Women's Health v. Jackson*, the Supreme Court upheld private causes of action as a lawful enforcement mechanism in the abortion context, as it is commonplace in other areas of the law. This Act, therefore, provides for similar

enforcement. By allowing Plaintiffs to sue abortion providers for wrongful death, the Act strategically overcomes enforcement and compliance roadblocks unique to abortion law.

Abortion protections are fraught with enforcement difficulties:

- District Attorneys and Attorneys General publicly commit to not enforcing abortion laws, even when *Roe v. Wade* is overturned. Most abortion clinics are located in these District Attorneys' jurisdictions;
- abortion providers enjoin laws as quickly as they are enacted through pre-enforcement challenges against the state:
- in a post-Roe world, many state and federal courts will continue to interpret laws narrowly to allow abortion; and
- abortion providers and chemical abortion pill distributors violate current abortion regulations, illegally mailing abortion pills to women.

The Act closes these enforcement gaps. By creating a private civil cause of action for wrongful death against abortion providers, they cannot enjoin the law through a pre-enforcement challenge against the state. Instead, the bill will be enacted regardless of the makeup of state or federal courts. The premise is that without government enforcement, there is no government action to enjoin. In other words, no *Younger Abstention Doctrine* exemption applies to the Act. Further, Texas proves abortion providers are reticent to incur civil liability because they complied with the Heartbeat Act without a single lawsuit being filed.

Under the Act, abortion providers illegally conducting abortions must litigate on the same basis as others by asserting their "rights" defensively, after being sued, rather than enjoining the law through a pre-enforcement challenge. The Supreme Court upheld this method in *Whole Women's Health v. Jackson* when Justice Gorsuch reiterated that the "Court has never recognized an unqualified right to pre-enforcement review of constitutional claims in federal court." 142 S. Ct. 522, 537–38 (2021). He also asserted that most litigants must wait to be sued and assert their rights—including abortion providers.

This legal framework withstood Supreme Court review and successfully produced compliance. It presents a strategic legal triumph for children in the womb, overcoming challenges pro-life protections faced for 50 years.

LEGISLATIVE HISTORY:

During the 87th Texas Legislature, Texas introduced the Heartbeat Act as Senate Bill 8. The Texas Legislature passed the bill and Governor Greg Abbott signed it into law in May 2021. It went into effect on September 1, 2021. Additionally, the state legislatures of Oklahoma and Idaho passed versions of the Heartbeat Act in 2022. Governor Kevin Stitt signed Oklahoma's Heartbeat Act into law on May 7, 2022. The law is now in effect. Governor Brad Little signed Idaho's Heartbeat Act into law on March 23, 2022. The Idaho Supreme Court temporarily stayed the law until arguments are heard.

Learn More: <u>HuCoAction.org</u>



THE HEARTBEAT ACT

Unborn Advocacy

Relating to abortion, including abortions after detection of a human child's heartbeat; authorizing a private civil right of act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF [STATE]:

SECTION 1. This Act shall be known as the [state] Heartbeat Act.

SECTION 2. Chapter [number], [state abortion regulation code], is amended by adding Subchapter [number] to read as follows:

SECTION 3. DEFINITIONS. As used in this subchapter:

- (1) "Abortion" means the act of using, prescribing, administering, procuring, or selling of any instrument, medicine, drug, or any other substance, device, or means with the purpose to terminate the pregnancy of a woman, with knowledge that the termination by any of those means will with reasonable likelihood cause the death of an unborn child. The term does not include:
 - (A) the use, prescription, administration, procuring, or selling of Plan B, morning-after pills, or any other type of contraception or emergency contraception;
 - (B) an act intended to save the life or preserve the health of the unborn child;
 - (C) removing a dead unborn child caused by spontaneous abortion; or
 - (D) treatment for an ectopic pregnancy, the implantation of a fertilized egg or embryo outside of the uterus.
- (2) "Heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the embryonic or fetal heart tissue within the gestational sac.
- (3) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.
- (4) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.
- (5) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.
 - (6) "Pregnancy" means the human female reproductive condition that:
 - (A) begins with fertilization;
 - (B) occurs when the woman is carrying the developing human offspring; and

- (C) is calculated from the first day of the woman's last menstrual period.
- (7) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.
 - (8) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.
- (9) "Woman" and "women" include any person whose biological sex is female, including any person with XX chromosomes and any person with a uterus.

SECTION 4. DETERMINATION OF PRESENCE OF UNBORN HEARTBEAT REQUIRED; RECORD. (A) For the purposes of determining the presence of an unborn heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

- (B) Except as provided by Sections 5 and 6, an abortion may not be performed or induced on a pregnant woman unless a physician has determined, in accordance with this section, whether the woman's unborn child has a detectable heartbeat.
- (C) In making a determination under Subsection (B), the physician must use a test that is:
 - (1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and
 - (2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.
- (D) A physician making a determination under Subsection (B) shall record in the pregnant woman's medical record:
 - (1) the estimated gestational age of the unborn child;
 - (2) the method used to estimate the gestational age; and
 - (3) the test used for detecting an unborn heartbeat, including the date, time, and results of the test.

SECTION 5. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE HEARTBEAT; EFFECT. (A) Except as provided by Sections 5 and 6, an abortion may not be performed or induced on a pregnant woman if a person detected a heartbeat for the unborn child as required by Section 4 or failed to perform a test to detect the heartbeat of an unborn child.

- (B) A physician does not violate this section if the physician performed a test for an unborn heartbeat as required by Section 4 and did not detect an unborn heartbeat.
- (C) This section does not affect:
 - (1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or
 - (2) any other provision of state law that regulates or prohibits abortion.

Section 6. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS. (A) Sections 4 and 5 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

- (B) A physician who performs or induces an abortion under circumstances described by Subsection (A) shall make written notations in the pregnant woman's medical record of:
 - (1) the physician's belief that a medical emergency necessitated the abortion; and
 - (2) the medical condition of the pregnant woman that prevented compliance with this subchapter.
- (C) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (B).

SECTION 7. EXEMPTION FOR PREEMPTION AND INTERGOVERNMENTAL IMMUNITY. Sections 4 and 5 do not apply to an abortion performed at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity.

SECTION 8. CONSTRUCTION OF SUBCHAPTER. Nothing in this subchapter may be construed to:

- (A) create or recognize a right to abortion before an unborn heartbeat is detected.
- (B) authorize the initiation of a cause of action against or the prosecution of a woman on whom an abortion is performed or induced or attempted to be performed or induced in violation of this subchapter;
- (C) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion; or
- (D) restrict a political subdivision from regulating or prohibiting abortion in any manner.

SECTION 9. LIMITATIONS ON PUBLIC ENFORCEMENT. Notwithstanding any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 10. No direct or indirect enforcement of this subchapter, may be taken or threatened by the state, a political subdivision, a district or county attorney, or any executive or administrative officer or employee of this state or a political subdivision against any person or entity, in any manner whatsoever, except as provided in Section 10, and no violation of this subchapter may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in Section 10, PROVIDED, that this section does not preclude enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this subchapter.

SECTION 10. CIVIL LIABILITY. (A) Any person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, has standing to bring and may bring a civil action against any person or entity that:

- (1) performs or induces an abortion in violation of any provision or requirement of this subchapter;
- (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of any provision or requirement of this subchapter, regardless of whether the person or entity knew or should have known that the abortion would be performed or induced in violation of this subchapter; or
 - (3) intends to engage in the conduct described by Subsections (A)(1) or (A)(2).

- (B) If a claimant prevails in an action brought under this section, the court shall award:
 - (1) injunctive relief sufficient to prevent the defendant from violating this subchapter or engaging in acts that aid or abet violations of this subchapter;
 - (2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced or aided or abetted in violation of this subchapter;
 - (3) nominal and compensatory damages if the plaintiff has suffered harm from the defendant's conduct, including but not limited to loss of consortium and emotional distress; and
 - (4) costs and attorney's fees.
- (C) Notwithstanding Subsection (B), a court may not award relief under Subsection (B)(2) or (B)(4) in response to a violation of Subsection (A)(1) or (A)(2) if the defendant demonstrates that a court has already ordered the defendant to pay the full amount of statutory damages under Subsection (B)(2) in another action for that particular violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.
- (D) Notwithstanding any other law, a person may bring an action under this section not later than the sixth anniversary of the date the cause of action accrues.
- (E) Notwithstanding any other law, the following are not a defense to an action brought under this section:
 - (1) ignorance or mistake of law;
 - (2) a defendant's belief that the requirements or provisions of this subchapter are unconstitutional or were unconstitutional;
 - (3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the defendant violated Subsection (A);
 - (4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action has been brought;
 - (5) non-mutual issue preclusion or non-mutual claim preclusion;
 - (6) the consent of the unborn child's mother to the abortion; or
 - (7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 11.
- (F)(1) It is an affirmative defense if a person or entity sued under Subsection (A)(2) or (A)(3) reasonably believed, after conducting a reasonable investigation, that the individuals and organizations involved with performing or facilitating the abortion would comply with every requirement and provision of this subchapter;
 - (2) The defendant has the burden of proving an affirmative defense under Subsection (F)(1) by a preponderance of the evidence.
- (G) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by [state constitution's free-speech provision] of the [name of state] Constitution.
- (H)(1) Notwithstanding any other law, neither the state, nor any of its political subdivisions, nor any district or

county attorney, nor any executive or administrative officer or employee of this state or a political subdivision may:

- (a) act in concert or participation with anyone who brings suit under this section;
- (b) establish or attempt to establish any type of agency or fiduciary relationship with a person who brings suit under this section;
- (c) make any attempt to control or influence a person's decision to bring suit under this section or that person's conduct of the litigation; or
- (d) intervene in any action brought under this section.
- (2) This subsection does not prohibit a person or entity described by this subsection from filing an amicus curiae brief in the action, so long as that person or entity does not act in concert or participation with the plaintiff or plaintiffs who sue under this section or violate any other provision of Subsection (H)(1).
- (I)(1) Notwithstanding any other law, a court may not award costs or attorney's fees to a defendant in an action brought under this section unless the plaintiff's claim that the defendant violated Subsection (A) is frivolous, malicious, or brought in bad faith.
 - (2) A court may not find that an action brought under this section is frivolous, malicious, or brought in bad faith within the meaning of Subsection (I)(1) if the plaintiff:
 - (a) reasonably believed that the defendant performed or induced an abortion in violation of any requirement or provision of this subchapter, engaged in conduct that aided or abetted the performance or inducement of such an abortion, or intended to engage in any such conduct, regardless of whether a previous court decision declared invalid or unconstitutional a requirement or provision of this subchapter or declared the defendant's behavior protected by the state or federal constitutions or by federal law; or
 - (b) brings suit to seek the overruling of any previous court decision that had pronounced unconstitutional a requirement or provision of this subchapter or any other law that regulates or restricts abortion, or that declared the defendant's behavior protected by the state or federal constitutions or by federal law.
- (J) Notwithstanding any other law, a civil action under this section shall not be subject to any provision of [the state's anti-SLAPP law, if it has one], and shall not be subject to any provision of [the state's Religious Freedom Restoration Act, if it has one].
- (K) Notwithstanding any other law, a civil action under this section may not be brought:
 - (1) against the woman upon whom an abortion was performed or induced or attempted to be performed or induced in violation of this subchapter, or against a pregnant woman who intends or seeks to abort her unborn child in violation of this subchapter;
 - (2) against any person or entity that performs, aids or abets, or attempts or intends to perform or aid or abet an abortion at the behest of federal agencies, contractors, or employees that are carrying out duties under federal law, if a prohibition on that abortion would violate the doctrines of preemption or intergovernmental immunity;
 - (3) against any common carrier that transports a pregnant woman to an abortion provider, if the common carrier is unaware that the woman intends to abort her unborn child; or
 - (4) by any person who impregnated a woman seeking an abortion through an act of rape, sexual assault, or

incest, or by anyone who acts in concert or participation with such a person.

SECTION 11. CIVIL LIABILITY: DEFENSES. (A) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the defendant's personal statutory or constitutional rights as a defense to liability under Section 10, and a court may not award relief under Section 10 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

(B) Nothing in this section or subchapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision of this subchapter as a defense to liability under Section 10.

SECTION 12. CIVIL LIABILITY: VENUE. (A) Notwithstanding any other law, a civil action brought under Section 10 may be brought in:

- (1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;
- (2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;
- (3) the county of the principal office in this state of any one of the defendants that is not a natural person; or
- (4) the county of residence for the claimant if the claimant is a natural person residing in this state.
- (B) If a civil action is brought under Section 10 in any one of the venues described by Subsection (A), the action may not be transferred to a different venue without the written consent of all parties.

SECTION 13. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED; LIMITS ON JURISDICTION. (A) Notwithstanding any other law, the state shall have sovereign immunity, each of its political subdivisions shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity as well as sovereign or governmental immunity, as appropriate, in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this subchapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this subchapter, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States.

- (B) Notwithstanding any other law, no provision of state law may be construed to waive or abrogate an immunity described in Subsection (A) unless it expressly waives or abrogates immunity with specific reference to this section.
- (C) Notwithstanding any other law, no attorney representing the state, its political subdivisions, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (A) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity.
- (D) Notwithstanding any other law, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would prevent the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this subchapter, or from filing a civil action under this subchapter.
- (E) Nothing in this section or subchapter shall be construed to prevent a litigant from asserting the invalidity

or unconstitutionality of any provision or application of this subchapter as a defense to any action, claim, or counterclaim brought against that litigant.

SECTION 14. SEVERABILITY. (A) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the Supreme Court of the United States held that an explicit statement of legislative intent is controlling, it is the intent of the Legislature that every provision, section, subsection, sentence, clause, phrase, or word in this subchapter, and every application of the provisions in this subchapter to every person, group of persons, or circumstances, are severable from each other.

- (B) If any application of any provision in this subchapter to any person, group of persons, or circumstances is found by a court to be invalid, preeempted, or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved, and shall remain in effect. All constitutionally valid applications of the provisions in this subchapter shall be severed from any applications that a court finds to be invalid, preeempted, or unconstitutional because it is the Legislature's intent and priority that every valid application be allowed to stand alone.
- (C) The Legislature further declares that it would have enacted this subchapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this subchapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this subchapter were to be declared invalid, preeempted, or unconstitutional.
- (D) If any provision of this subchapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (A), (B), and (C).
- (E) No court may decline to enforce the severability requirements of Subsections (A), (B), (C), and (D) on the ground that severance would "rewrite" the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting a statute or engaging in legislative or lawmaking activity, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:
 - (1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the [name of state] Constitution or United States Constitution;
 - (2) is not a formal amendment of the language in a statute; and
 - (3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.
- (F) If any state or federal court disregards any of the severability requirements in Subsections (A), (B), (C), (D), of (E), and declares or finds any provision of this subchapter facially unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal law, or the federal or state constitutions then that provision shall be interpreted, as a matter of state law, as if the Legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law, or the federal or state constitutions and every court shall adopt this saving construction of that provision until the court ruling that



THE HUMAN CHILD PROTECTION ACT BACKGROUNDER

Preborn Advocacy

PROBLEM:

Many states enact both life-saving protections and protect women from negligent abortion practices such as mail-order abortion pills. However, abortionists continue to adapt to circumvent the law and take advantage of enforcement loopholes. Abortion clinics are creating "abortion supercenters" located in neighboring "abortion destination" states, intentionally located adjacent to states who protect life. For instance, abortion supercenters in Illinois in Kansas prey on women from neighboring metropolitan areas such as St. Louis or Kansas City. Furthermore, the abortion pill regimen now accounts for more than half of abortions performed in the United States. The federal government recently expanded chemical abortions by allowing for prescribing the pill via telemedicine and delivery through the mail. Women dangerously obtain abortion pills without sonograms, seeing a physician, or any guidance. The abortion pill regimen ends a human life and poses significant health risks to women. More than ever, at-home abortions expose women to serious complications.

PURPOSE:

The Human Child Protection Act ("Act") protects preborn human life from abortion and honors the authority of states to protect all preborn human beings, wherever they are. The Act also holds abortionists, and those who aid and abet them, accountable for dangerously and negligently mailing the illegal chemical abortion pill. By doing so, mothers are shielded from the dangers of the abortion pill regimen. The Act strategically overcomes historical enforcement challenges to these issues.

RESULTS:

This bill innovatively closes major loopholes abortionists utilize to prey on women and abort their children. By comprehensively protecting children in the womb from abortion, the state will shield both unborn and their mothers from the harms of abortion and abortion trafficking.

Learn More: <u>HuCoAction.org</u>

