

TO: Texas College of Emergency Physicians

FROM: Imperium Public Affairs

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SUBJECT: Summaries of Senate Bill 8 and Senate Bill 4

The Texas Legislature has recently passed some of the most restrictive abortion laws in the country, that when coupled with the recent U.S. Supreme Court ruling on the *Dobbs* case, create an environment of uncertainty for healthcare providers moving forward. In an effort to inform, summaries of both Senate Bill 8 (SB 8) and Senate Bill 4 (SB 4) are provided below.

On July 27th, 2022, the Attorney General of Texas, Ken Paxton, has issued an advisory on the laws in Texas since the *Dobbs* ruling was issued. You can access the link [here](#) for his interpretation of current law in Texas.

This information should not be considered legal advice on any subject matter. If you need additional or specific legal advice, please seek the counsel of an attorney or other appropriate professional experts.

SUMMARY OF SB 4 – REPORTING REQUIREMENTS FOR PROVIDERS

- Senate Bill 4 was signed into law and became effective December 2nd, 2021 – the bill prohibits a person from providing an abortion-inducing drug to a pregnant woman without satisfying the applicable informed consent requirements for abortions and to require a physician who provides such a drug to comply with the applicable physician reporting requirements regarding abortions.
- SB 4 creates a state jail felony offense for a person who intentionally, knowingly, or recklessly violates provisions relating to abortion-inducing drugs but exempts a pregnant woman on whom a drug-induced abortion is attempted, induced, or performed from criminal liability and establishes an administrative violation based on conduct constituting the offense.
- Important for Emergency Medicine, Section 2 of SB 4 also amends current statute that require reporting of an “abortion complication” or an “adverse event” by any physician who diagnoses or treats a patient at any point in the future who has had an abortion and presents with one of the expanded list of these “abortion complications” and “adverse events” before the treating physician. The statute became effective on December 2, 2021 and requires from a treating physician and health care providing facility the following:

(b) The reporting requirements of this section apply only to:

(1) a physician who:

(A) performs or induces at an abortion facility an abortion that results in an abortion complication diagnosed or treated by that physician; or

(B) diagnoses or treats an abortion complication that is the result of an abortion performed or induced by another physician; or

(2) a health care facility that is a hospital, abortion facility, freestanding emergency medical care facility, or health care facility that provides emergency medical care, as defined by Section 773.003.

(c) A physician described by Subsection (b)(1) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated by that physician not later than the end of the third business day after the date on which the complication is diagnosed or treated. Each health care facility described by Subsection (b)(2) shall electronically submit to the commission in the form and manner prescribed by commission rule a report on each abortion complication diagnosed or treated at the facility not later than the 30th day after the date on which the complication is diagnosed or treatment is provided for the complication.

- This list of what qualifies as an “abortion complication” triggering reporting was expanded to add 17 more conditions and the full list now includes the following (new language in red):

(1) shock;

(2) uterine perforation;

(3) cervical laceration;

(4) hemorrhage;

(5) aspiration or allergic response;

(6) infection;

(7) sepsis;

(8) death of the patient;

(9) incomplete abortion;

- (10) damage to the uterus;*
- (11) an infant born alive after the abortion;*
- (12) blood clots resulting in pulmonary embolism or deep vein thrombosis;*
- (13) failure to actually terminate the pregnancy;*
- (14) pelvic inflammatory disease;*
- (15) endometritis;*
- (16) missed ectopic pregnancy;*
- (17) cardiac arrest;*
- (18) respiratory arrest;*
- (19) renal failure;*
- (20) metabolic disorder;*
- (21) embolism;*
- (22) coma;*
- (23) placenta previa in subsequent pregnancies;*
- (24) preterm delivery in subsequent pregnancies;*
- (25) fluid accumulation in the abdomen;*
- (26) hemolytic reaction resulting from the administration of ABO-incompatible blood or blood products;*
- (27) adverse reactions to anesthesia or other drugs; or*
- (28) any other adverse event as defined by the United States Food and Drug Administration's criteria provided by the MedWatch Reporting System.*

- Section 6 of SB 4 increases the penalty for violation of this amended statute, including the reporting requirements, to a minimum of a state jail felony. A state jail felony is punishable by confinement in a state jail for a term from 180 days to 2 years and, in addition to confinement, an optional fine not to exceed \$10,000 or Class A misdemeanor punishment.

SUMMARY OF SB 8 – EXPANDED ABORTION PROHIBITIONS

- Texas Senate Bill 8 (SB 8), which bans abortions as early as six weeks into pregnancy, went into effect September 1, 2021.
- SB 8 additionally bans "aiding or abetting" a prohibited abortion "regardless of whether the person knew or should have known that the prohibited abortion would be performed or induced."
- SB 8 empowers any private citizen to file a civil suit against someone they claim has violated the law and allows for awards of a minimum of \$10,000 plus attorney fees.
- The ban requires that a "fetal heartbeat" must be determined via "standard medical practice," and defines the standard as: (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."
- An exception to the law exists only for a medical emergency. If an abortion is "performed or induced" because of a medical emergency, the law states that physicians must "execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman 's medical condition requiring the abortion." The physician must also maintain a copy "in the physician 's practice records" and place it "in the pregnant woman's medical record."
- On July 14, 2022, Texas Attorney General Ken Paxton announced a lawsuit against the federal government after the Biden administration said federal rules require hospitals to provide abortions if the procedure is necessary to save a mother's life. The lawsuit says that the guidance is unlawful and that the Emergency Medical Treatment and Labor Act does not cover abortions.