



Texas' Woman and Child Protection Act

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Effective December 4, 2025, the Woman and Child Protection Act (the "Act," also known as House Bill 7) allows individuals to sue individuals who import abortion drugs into Texas, with potential damages of at least \$100,000 per violation.

■ Background

Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* (2022), which overturned *Roe v. Wade*, and Texas' subsequent criminal ban on all elective abortion under the Human Life Protection Act, abortion-inducing drugs are increasingly being purchased online from out-of-state entities. Texas is seeking to curtail this practice by creating civil remedies similar to those in the Texas Heartbeat Act which allows individuals to bring civil lawsuits against those who perform or are involved in the facilitation of a medical abortion.

■ The Act

The Act authorizes a private citizen to initiate a civil action against anyone who manufactures, distributes, mails, transports, delivers, prescribes, or provides abortion-inducing drugs in Texas. Remedies include injunctive relief, damages of at least \$100,000 per violation, and attorneys' fees and costs. A private citizen unrelated to a pregnant woman seeking abortion pills would receive \$10,000, with \$90,000 going to the charity of their choice, if they prevail.

In defining who could be a defendant in a civil action under the Act, the list is extensive and includes out-of-state actors.

The bill includes several exemptions, including:

- Suits against pregnant women seeking or obtaining abortion-inducing drugs for their own abortions;
- Suits against hospitals, health care facilities, and physician groups;
- Abortion-inducing drugs used for medical emergencies, ectopic pregnancies, or removing a deceased unborn child;

- Conditional exemptions for internet service providers, search engines and cloud providers, transportation companies, delivery networks, and pharmaceutical manufacturers; and
- “Speech or conduct protected by the First Amendment.”

■ Potential Effects on Health Plans

Importantly, in the context of employee benefits, there is no exemption for plan sponsors. Therefore, an employer whose drug program covers abortion-inducing drugs in violation of this law might be held liable.

The Act does not expressly define what “distribute” or “provide” means, or at what point First Amendment protected conduct crosses into “providing” abortion-inducing drugs.

Because lawsuits can be brought by private citizens, plan sponsors face the risk of litigation from ideologically or financially motivated individuals, even if the legal grounds are tenuous. Defending against these lawsuits could be costly, regardless of the outcome.

Under ERISA, state law is preempted to the extent that it relates to benefits. Although unclear, employers other than governmental and church employers may be protected under this doctrine.

Abortion shield laws (state-level protections designed to shield individuals seeking and providing reproductive care from legal action, particularly from out-of-state investigations and prosecutions) enacted in the provider’s home state have made it challenging for these types of lawsuits to advance.

■ Employer Action

Employers with self-funded plans covering abortion-inducing drugs in Texas should decide whether they want to continue to do so.

Employers should watch for further developments, as this law is expected to face legal challenges.