

Overview of Texas Anti-Abortion Law SB8

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Texas Governor Signs Restrictive Abortion Law

On Wednesday, May 19, Texas Gov. Greg Abbott signed into law Senate Bill 8 (SB8), a measure that prohibits in Texas abortions as early as six weeks — before most women know they are pregnant. The signing of the bill opens a new battle ground over abortion restrictions with first-of-its-kind legal provisions intended to make the law harder to block.

As Abbott signed the bill he said “Our creator endowed us with the right to life and yet millions of children lose their right to life every year because of abortion.” He also noted that the Texas Legislature “worked together on a bipartisan basis to pass the bill,” that means both Republicans and Democrats. SB8 was a top priority for Republican lawmakers, nearly all of whom signed on as an author or sponsor of the measure. The law took effect on September 1st.

Abortion rights advocates have promised to challenge the new law, considered one of the most extreme nationwide and the strictest in Texas since the landmark Roe v. Wade decision. Essentially, it would amount to an outright ban on abortions.

The governor’s signature comes just after the U.S. Supreme Court said it would hear a case concerning a Mississippi law that would ban most abortions after 15 weeks, and could lead to new limits on abortion rights. It will be the first major abortion case heard before the court's newly expanded conservative majority, with the possibility of their overturning Roe v. Wade.

The Texas bill bans abortions after whenever an ultrasound can detect what lawmakers defined as a fetal “heartbeat,” which can be as early as six weeks into pregnancy. Medical and legal experts say the term is misleading because embryos don’t possess a heart at that developmental stage. Although some people might picture a heart-shaped organ beating inside a fetus, this is not the case. Rather, at six weeks of pregnancy, an ultrasound can detect “a little flutter in the area that will become the future heart of the baby,” said Dr. Saima Aftab, medical director of the Fetal Care Center at Nicklaus Children's Hospital in Miami. This flutter happens because the group of cells that will become the future “pacemaker” of the heart gain the capacity to fire electrical signals.

Dr. Aftab also reports that the heart still has a lot of development to undergo before it is fully formed. Indeed, the entire first trimester of pregnancy is a time of

"organogenesis," or the formation of organs. After the detection of the flutter at six weeks, the heart muscle continues to develop over the next four to six weeks, undergoing the folding and bending that needs to happen for the heart to take its final shape. "A lot of the heart development is still ongoing" during the first trimester, but that does not mean a fetus is viable outside the womb.

Doctors now consider 22 weeks (5.5 months) the earliest gestational age when a baby is "viable," or able to survive outside the womb. But this is still extremely premature, and a baby born at this age will need a great deal of medical attention. Even if they survive, the risk of permanent disability is very high.

SB8 prohibits abortions even in cases where the woman was impregnated as a result of rape or incest, but there is an exception for medical emergencies. Similar bills have been passed by other states and held up by the courts, including Alabama, Georgia, Kentucky, Ohio, Indiana, N. Dakota, Arkansas, Louisiana, Mississippi and Missouri; but Texas' version has a twist.

Instead of having the government enforce the law, the bill turns the reins over to private citizens — who are newly empowered to sue abortion providers or anyone who helps someone get an abortion after a so-called fetal "heartbeat" has been detected. The person would not have to be connected to someone who had an abortion or to a provider in order to sue. It gives any individual the right to sue anyone involved with providing or facilitating an abortion.

Proponents of the new law hope to get around the legal challenges that have tied up abortion restrictions in the courts in the past. While abortion providers typically sue the state to stop a restrictive abortion law from taking effect, there's no state official enforcing Senate Bill 8 — so there's no one to sue!

"It's a very unique law and it's a very clever law," said Josh Blackman, a constitutional law professor at South Texas College of Law Houston. "Planned Parenthood cannot go to court and sue Texas Attorney General Ken Paxton like they usually would, because he has no role in enforcing the statute. They have to basically sit and wait to be sued." While this law amounts to the most extreme abortion ban in the country, "abortion remains both legal in Texas and supported by the majority of Texans - 80%.

More than 56,600 abortions were performed on Texas residents in 2019, according to state statistics, most of them in the first trimester.

Prior to SB8 most abortions in Texas were prohibited after about 20 weeks. Pill-induced abortions were barred at 10 weeks. An abortion provider is required to perform a sonogram on the woman 24 hours before the abortion and give them information about medical risks, abortion alternatives and assistance available to those who follow through with their pregnancy. About 90% of women who come to Whole Woman's Health clinics in Texas are more than six weeks into their pregnancy.

- The new law would allow for a cascade of lawsuits against abortion providers that would sap their time and money even if they ultimately won in court.
- Under the broad language in the bill family members, abortion funds, rape crisis counselors and other medical professionals could be open to lawsuits,
- The ultimate goal is to incentivize abortion providers to comply with the law instead of fighting it in court.
- People who sue would be awarded at least \$10,000, as well as costs for attorney's fees, if they won.
- Opponents of the legislation condemned its passage stating the six-week cutoff amounted to an effective ban on abortions in the state.
- The bill was opposed by more than 300 Texas lawyers who said it undermined longstanding rules and tenets of the legal system, including that a person must be injured to sue.

Federal Court Suspends Texas Abortion Law

On Wednesday, October 6, 2021, U.S. Federal District Judge Robert Pitman ordered Texas to suspend this most restrictive abortion law. The court temporarily blocked the bill for the "offensive deprivation" of the constitutional right to an abortion." The order is the first legal blow to the Texas law, which until now had withstood early challenges.

Thousands of women and their supporters attended the Women's March ATX rally at the Texas State Capitol in Austin on Saturday, Oct 2nd. The march was a response to controversial SB8 legislation. However, even with the law on hold, abortion services in Texas did not instantly resume because doctors still fear that they could be sued without a more permanent legal decision. Planned Parenthood reports the number of patients at their Texas clinics decreased by nearly 80% in the two weeks after the law took effect.

Some providers have said that Texas clinics are now in danger of closing while neighboring states struggle to keep up with a surge of patients who must drive hundreds of miles. Other women, they say, are being forced to carry pregnancies to term.

Texas officials swiftly told the court of their intention to seek a reversal of the suspension from the 5th U.S. Circuit Court of Appeals, which previously allowed the restrictions to take effect.

At the same time, on seemingly positive note, a lawsuit was brought by the Biden administration, which argued that Texas has waged an attack on a woman's constitutional right to abortion "A state may not ban abortions at six weeks. Texas knew this, but it wanted a six-week ban anyway, so the state resorted to an unprecedented scheme of vigilante justice that was designed to scare abortion providers and others who might help women exercise their constitutional rights."

Other states, mostly in the South, have passed similar laws that ban abortion within the early weeks of pregnancy, all of which judges have blocked. But Texas' version has so far outmaneuvered the courts because it leaves enforcement to private citizens to file suits, not prosecutors, which critics say amounts to a bounty.

US Appeals Court Reinstates Near Total Abortion Ban

As the Texas abortion law sparked protests across the country, including in Washington DC, on Saturday, October 9th, a US appeals court has temporarily reinstated Texas's near total ban on abortions. The Fifth Circuit Court of Appeals agreed to a request from Texas Attorney General Paxton that an injunction imposed against the law be lifted.

Paxton said the court's decision was "great news", adding he would "continue to fight to keep Texas free from federal overreach". The dispute over the law could ultimately end up before the US Supreme Court, which in September declined to hear an emergency case filed in a last-minute bid to prevent the ban passing into law.

One abortion provider stated "Patients are being thrown back into a state of chaos and fear, and this cruel law is falling hardest on those who already face discriminatory obstacles in health care, especially Black, Indigenous, and other people of color, undocumented immigrants, young people, those struggling to make ends meet, and those in rural areas, the courts have an obligation to block laws that violate fundamental rights."

It is obvious that this whole scenario as a testing ground for similar laws across the country. These heartbeat bans – laws are just a few of nearly 100 abortion restrictions that state legislatures have passed in 2021,

Not being an attorney, one can only speculate that this situation brings to question the "separation of church and state" as it is based on the bill's writers' religious belief as

to when life begins, and when a fetus is viable. As well as “States’ rights” versus Federal rights, when a state counters the Constitution. Also, that since the majority of Texans and America residents for that fact, believe abortion is a woman’s civil and human right alone, that this is happening due to Trump, Republicans and others seeding of our courts with conservative judges, who are allowing these laws to pass. A minority has once again found devious ways to limit our rights.

Note: This summary was garnered from several articles:

- Gov. Greg Abbott signs into law one of nation’s strictest abortion measures, banning procedure as early as six weeks into a pregnancy
By Shannon Najmabadi, May 19, 2021
- Judge orders Texas to suspend new law banning most abortions
Daily News/Associated Press, October 6, 2021
- Texas abortion: US appeals court reinstates near total ban
Sat, October 9, 2021
- These Are All the States That Have Passed Anti-Abortion Laws in 2019
<https://www.newsweek.com/state-abortion-laws-2019-list-1440609>

October 15, 2021