

HB 1685: Texas Trigger Ban

The goal of the Trigger Ban (HB 1685 by Rep. Giovanni Capriglione) is to enact a complete ban on abortion that will go into effect when and to the extent that Supreme Court reverses its precedent preventing states from banning abortion – *Roe v. Wade* and *Planned Parenthood v. Casey*. Five states have passed trigger bans, and at least four are considering passing similar laws.

Texas Pre-*Roe* Statute

In 1973, the Supreme Court struck down as unconstitutional Texas' prohibition on abortion first passed in 1854. That statute (as somewhat modified through the years) had been used to prosecute illegal abortion providers numerous times. The most recent conviction was upheld by the Court of Criminal Appeals in *Thompson v. State*, 493 S.W.2d 913 (1971). Women on whom abortions were performed were never prosecuted.

The legislature has never explicitly repealed the pre-*Roe* statutes. While not printed, they still exist in Vernon's Civil Statutes. See Chap. 6-1/2, Art. 4512.1-5, 6.

However, a non-binding 5th Circuit Court of Appeals opinion suggests the legislature has subsequently repealed the pre-*Roe* statutes by implication by passing laws that govern abortions on minors, regulate abortion facilities, and ban state funding for abortions in Medicaid. See *McCorvey v. Hill* (2004).

Need for the Trigger Ban

Texas needs a new law protecting unborn babies from abortion, beginning at fertilization.

Current Supreme Court precedent, as defined in *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992), prohibit states from banning or limiting abortion by imposing an "undue burden" on a woman. In *Casey*, the Court wrote, "A State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." Also in *Casey*, the Court defined viability as "the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb."

If the Supreme Court changes its precedent and allows states to protect unborn children before viability, Texas needs a law to ban abortion to the extent allowable under the new precedent.

Unfortunately, the State cannot rely on the pre-*Roe* statutes; a state court might find that those laws have indeed been repealed by implication.

Texas Trigger Ban HB 1685 (86R 8713)

Under the HB 1685, any person commits a crime of homicide under Chapter 19, Penal Code, who performs an abortion (except to save the life of the mother). Women on whom an abortion is performed or attempted may not be prosecuted.

The law would go into effect 30 days after the Supreme Court issues a judgment overruling, wholly or partly, *Roe v. Wade* or *Planned Parenthood v. Casey*, thereby allowing states to prohibit abortion.

Other States

- Five states have passed trigger bans: Arkansas, Louisiana, Mississippi, North Dakota, and South Dakota.
- Four states are considering a trigger ban: Kentucky (passed the House), Missouri (passed House), Tennessee (introduced), and Oklahoma (passed Senate panel).