

BILL ANALYSIS

Senate Research Center
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H.B. 16
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law, Chapter 151.002 of the Family Code, establishes the rights of a living child after an abortion or premature birth. However, this "right" is not protected by any state civil enforcement if violated.

H.B. 16 would enforce this right by holding physicians accountable. The bill authorizes the Attorney General of Texas to impose a \$100,000 fine and collect any necessary attorney fees for any physician who fails to provide the appropriate medical attention.

H.B. 16 also clarifies that a physician-patient relationship exists and requires the same degree of professional, skill, care, and diligence to preserve the life and health of the child as any reasonably diligent and conscientious physician would render to any other child born alive at the same gestational age.

H.B. 16 amends current law relating to the enforcement of the rights of a living unborn child after an abortion; creates a civil cause of action; provides a civil penalty; and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 151.002, Family Code, to read as follows:

Sec. 151.002. RIGHTS OF A LIVING CHILD AFTER AN ABORTION OR PREMATURE BIRTH; CIVIL ACTION.

SECTION 2. Amend Section 151.002, Family Code, by adding Subsections (c), (d), (e), (f), (g), (h), (i), and (j), as follows:

(c) Provides that, for purposes of this section, a physician-patient relationship is established between a child born alive after an abortion and the physician who performed or attempted the abortion. Requires the physician to exercise the same degree of professional skill, care, and diligence to preserve the life and health of the child as a reasonably diligent and conscientious physician would render to any other child born alive at the same gestational age. Provides that in this subsection, "professional skill, care, and diligence" includes a requirement that the physician who performed or attempted the abortion ensure that the child born alive be immediately transferred and admitted to a hospital.

(d) Authorizes a child born alive after an abortion or the child's parent or legal guardian to:

(1) bring a civil action against a physician who performed or attempted the abortion if the physician violates Subsection (c) by failing to provide the appropriate medical treatment to the child; and

(2) recover under a civil action described by Subdivision (1):

(A) economic damages in an amount equal to three times the cost of the abortion;

(B) other compensatory damages;

(C) exemplary damages; and

(D) reasonable and necessary attorney's fees.

(e) Authorizes a physician who prevails in a civil action described by Subsection (d) to recover reasonable attorney's fees incurred in defending the action.

(f) Prohibits a woman on whom an abortion is performed, except as provided by Subsection (e), from being held liable under this section.

(g) Provides that a physician who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion is liable to the state for a civil penalty in an amount not less than \$100,000. Authorizes the Texas attorney general (attorney general) to bring a suit to collect the penalty and to recover reasonable attorney's fees incurred in collecting the penalty. Provides that the penalty is in addition to any other civil liability incurred under Subsection (d) or any other law.

(h) Provides that a physician commits an offense if, in the course of performing or attempting an abortion, the physician with gross negligence, as defined by Section 41.001 (Definitions), Civil Practice and Remedies Code, fails to provide the appropriate medical treatment in accordance with Subsection (c) to a child born alive after the abortion. Provides that an offense under this subsection is a felony of the third degree.

(i) Authorizes a person who has knowledge of a failure to comply with this section to report the failure to comply to the attorney general. Provides that the identity and personally identifiable information of the person reporting the failure to comply with this section are confidential under Chapter 552 (Public Information), Government Code.

(j) Defines "abortion."

SECTION 3. Makes application of Section 151.002, Family Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2019.