

By: Leach, Bonnen of Galveston, Klick,
Oliverson, Morrison, et al.

H.B. No. 16

Substitute the following for H.B. No. 16:

By: Smith

C.S.H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of the rights of a living unborn child after an abortion; creating a civil cause of action; providing a civil penalty; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 151.002, Family Code, is amended to read as follows:

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

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

(c) 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. The physician must 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. 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) A child born alive after an abortion or the child's

1 parent or legal guardian may:

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

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

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

10 (B) other compensatory damages;

11 (C) exemplary damages; and

12 (D) reasonable and necessary attorney's fees.

13 (e) A physician who prevails in a civil action described by
14 Subsection (d) may recover reasonable attorney's fees incurred in
15 defending the action.

16 (f) Except as provided by Subsection (e), a woman on whom an
17 abortion is performed may not be held liable under this section.

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

26 (h) A physician commits an offense if, in the course of
27 performing or attempting an abortion, the physician with gross

1 negligence, as defined by Section 41.001, Civil Practice and
2 Remedies Code, fails to provide the appropriate medical treatment
3 in accordance with Subsection (c) to a child born alive after the
4 abortion. An offense under this subsection is a felony of the third
5 degree.

6 (i) A person who has knowledge of a failure to comply with
7 this section may report the failure to comply to the attorney
8 general. The identity and personally identifiable information of
9 the person reporting the failure to comply with this section are
10 confidential under Chapter 552, Government Code.

11 (j) In this section, "abortion" has the meaning assigned by
12 Section 245.002, Health and Safety Code.

13 SECTION 3. Section 151.002, Family Code, as amended by this
14 Act, applies only to a child born alive on or after the effective
15 date of this Act.

16 SECTION 4. This Act takes effect September 1, 2019.