

By: Leach

H.B. No. 16

A BILL TO BE ENTITLED

AN ACT

relating to enforcement of the rights of a living child born after an abortion; creating a civil cause of action.

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), and (h) 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. A physician who performed or attempted the abortion 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.

(d) A child born alive after an abortion, as defined by Section 245.002, Health and Safety Code, or the child's parent or legal guardian, may 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

1 treatment to the child. The child, or the child's parent or legal  
2 guardian, may recover the following in the civil action:

3 (1) compensatory damages;

4 (2) exemplary damages in an amount equal to three  
5 times the cost of the abortion;

6 (3) punitive damages; and

7 (4) reasonable attorney's fees.

8 (e) A woman on whom an abortion, as defined by Section  
9 245.002, Health and Safety Code, is performed may not be held liable  
10 under this section.

11 (f) A physician who violates Subsection (c) by failing to  
12 provide the appropriate medical treatment to a child born alive  
13 after an abortion is liable to the state for a civil penalty of not  
14 less than \$100,000. The attorney general may bring a suit to collect  
15 the penalty. In addition to the civil penalty, the attorney general  
16 may recover reasonable attorney's fees. The civil penalty described  
17 in this subsection is in addition to any other recovery authorized  
18 under Subsection (d) or other law.

19 (g) If a physician prevails in an action under Subsection  
20 (f), the physician may recover reasonable attorney's fees incurred  
21 in defending the action.

22 (h) A person who has knowledge of a failure to comply with  
23 this section may report the failure to comply with the attorney  
24 general. The identity and any personally identifiable information  
25 of the person reporting the failure to comply with this section is  
26 confidential under Chapter 552, Government Code.

27 SECTION 3. Section 151.002, Family Code, as amended by this

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1 Act, applies only to a child born alive on or after the effective  
2 date of this Act.

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