

By: Kolkhorst, et al.

S.B. No. 23

A BILL TO BE ENTITLED

1 AN ACT
2 relating to enforcement of the rights of a living child born after
3 an abortion; creating a civil cause of action; creating a criminal
4 offense.

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

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

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

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

13 (c) For purposes of this section, a physician-patient
14 relationship is established between a child born alive after an
15 abortion or attempted abortion and the physician who performed or
16 attempted the abortion. A physician who performed or attempted the
17 abortion must exercise the same degree of professional skill, care,
18 and diligence to preserve the life and health of the child as a
19 reasonably diligent and conscientious physician would render to any
20 other child born alive at the same gestational age.

21 (d) A woman on whom an abortion, as defined by Section
22 245.002, Health and Safety Code, is performed or attempted to be
23 performed may not be held liable under this section.

24 (e) A physician who violates Subsection (c) by failing to

1 provide the appropriate medical treatment to a child born alive
2 after an abortion or an attempted abortion is liable to the state
3 for a civil penalty of not less than \$100,000. The attorney general
4 may bring a suit to collect the penalty. In addition to the civil
5 penalty, the attorney general may recover reasonable attorney's
6 fees. The civil penalty described in this subsection is in addition
7 to any other recovery authorized under other law.

8 (f) A person who has knowledge of a failure to comply with
9 this section shall report to the attorney general. The identity and
10 any personally identifiable information of the person reporting the
11 failure to comply with this section is confidential under Chapter
12 552, Government Code.

13 (g) A physician or health care practitioner who violates
14 Subsection (c) by failing to provide the appropriate medical
15 treatment to a child born alive after an abortion or an attempted
16 abortion commits an offense. An offense under this subsection is a
17 felony of the third degree.

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

21 SECTION 4. The change in law made by this Act applies only
22 to the prosecution of an offense committed on or after the effective
23 date of this Act. The prosecution of an offense committed before
24 the effective date of this Act is governed by the law in effect on
25 the date the offense was committed, and the former law is continued
26 in effect for that purpose. For purposes of this section, an
27 offense is committed before the effective date of this Act if any

1 element of the offense occurs before the effective date.

2 SECTION 5. This Act takes effect September 1, 2019.