

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 the  
24 effective date of this Act is governed by the law in effect on the  
25 date the offense was committed, and the former law is continued in  
26 effect for that purpose. For purposes of this section, an offense is  
27 committed before the effective date of this Act if any element of

1 the offense occurs before the effective date.

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