

SENATE AMENDMENTS

2nd Printing

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

H.B. No. 16

A BILL TO BE ENTITLED

1 AN ACT

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

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

13 (c) For purposes of this section, a physician-patient
14 relationship is established between a child born alive after an
15 abortion and the physician who performed or attempted the abortion.
16 The physician must exercise the same degree of professional skill,
17 care, and diligence to preserve the life and health of the child as
18 a reasonably diligent and conscientious physician would render to
19 any other child born alive at the same gestational age. In this
20 subsection, "professional skill, care, and diligence" includes a
21 requirement that the physician who performed or attempted the
22 abortion ensure that the child born alive be immediately
23 transferred and admitted to a hospital.

24 (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.

ADOPTED

MAY 16 2019

Atty. Gen. Paul
Secretary of the Senate

By: Leach/Wolkhorst .B. No. _____

Substitute the following for .B. No. _____:

By: *D. Borking* C.S. H.B. No. 16

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the enforcement of the rights of a living unborn child
3 after an abortion; providing a civil penalty; 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 PENALTY; CRIMINAL OFFENSE.

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

12 (c) For purposes of this section, a physician-patient
13 relationship is established between a child born alive after an
14 abortion and the physician who performed or attempted to perform
15 the abortion. The physician must exercise the same degree of
16 professional skill, care, and diligence to preserve the life and
17 health of the child as a reasonably diligent and conscientious
18 physician would render to any other child born alive at the same
19 gestational age. In this subsection, "professional skill, care, and
20 diligence" includes a requirement that the physician who performed
21 or attempted the abortion ensure that the child born alive be
22 immediately transferred and admitted to a hospital.

23 (d) A woman on whom an abortion, as defined by Section
24 245.002, Health and Safety Code, is performed or attempted to be

1 performed may not be held liable under this section.

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

10 (f) A person who has knowledge of a failure to comply with
11 this section shall report to the attorney general. The identity and
12 any personally identifiable information of the person reporting the
13 failure to comply with this section is confidential under Chapter
14 552, Government Code.

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

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

23 SECTION 4. The change in law made by this Act applies only
24 to the prosecution of an offense committed on or after the effective
25 date of this Act. The prosecution of an offense committed before
26 the effective date of this Act is governed by the law in effect on
27 the date the offense was committed, and the former law is continued

1 in effect for that purpose. For purposes of this section, an
2 offense is committed before the effective date of this Act if any
3 element of the offense occurs before the effective date.

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

ADOPTED

✓✓
MAY 16 2019

FLOOR AMENDMENT NO. 1

Larry Spaw
Secretary of the Senate

BY:

Jose Rodriguez

1 Amend C.S.H.B. No. 16 (senate committee printing) in SECTION
2 2 of the bill, in added Section 151.002(c), Family Code (page 1,
3 line 41), by striking "and admitted".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 17, 2019

TO: Honorable Dennis Bonnen, Speaker of the House, House of Representatives

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (Relating to the enforcement of the rights of a living unborn child after an abortion; providing a civil penalty; creating a criminal offense.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would create a civil cause of action against a physician in certain circumstances and make a physician liable to the State for a civil penalty of not less than \$100,000. The attorney general may bring suit to collect the civil penalty and may recover reasonable attorney's fees. The bill would create a criminal offense against a physician or health care practitioner who fails to provide the appropriate medical treatment with a felony of the third degree. The bill would take effect on September 1, 2019 and would only apply to a child born alive on or after this effective date.

The Office of Court Administration, Office of the Attorney General and the Texas Medical Board indicate the bill's provisions could be absorbed within existing resources. The Comptroller of Public Accounts indicates the fiscal impact cannot be estimated at this time.

This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: WP, AKi, SK, SLE, EP, SPa, LR, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 13, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (Relating to the enforcement of the rights of a living unborn child after an abortion; providing a civil penalty; creating a criminal offense.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would create a civil cause of action against a physician in certain circumstances and make a physician liable to the State for a civil penalty of not less than \$100,000. The attorney general may bring suit to collect the civil penalty and may recover reasonable attorney's fees. The bill would create a criminal offense against a physician or health care practitioner who fails to provide the appropriate medical treatment with a felony of the third degree. The bill would take effect on September 1, 2019 and would only apply to a child born alive on or after this effective date.

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: WP, AKi, SK, SLE, EP, SPa, LR, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

May 3, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (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.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would create a civil cause of action against a physician in certain circumstances and make a physician liable to the State for a civil penalty of not less than \$100,000. The attorney general may bring suit to collect the civil penalty and may recover reasonable attorney's fees. If a physician were to prevail in a civil action, the physician may recover reasonable attorney's fees incurred. The bill would create a criminal offense against a physician who commits gross negligence and fails to provide the appropriate medical treatment with a felony of the third degree. The bill would take effect on September 1, 2019 and would only apply to a child born alive on or after this effective date.

The Office of Court Administration, Office of the Attorney General and the Texas Medical Board indicate the bill's provisions could be absorbed within existing resources. The Comptroller of Public Accounts indicates the fiscal impact cannot be estimated at this time.

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: WP, SLE, EP, AKi, SPa, LR, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 5, 2019

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (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.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would create a civil cause of action against a physician in certain circumstances and make a physician liable to the State for a civil penalty of not less than \$100,000. The attorney general may bring suit to collect the civil penalty and may recover reasonable attorney's fees. If a physician were to prevail in a civil action, the physician may recover reasonable attorney's fees incurred. The bill would create a criminal offense against a physician who commits gross negligence and fails to provide the appropriate medical treatment with a felony of the third degree. The bill would take effect on September 1, 2019 and would only apply to a child born alive on or after this effective date.

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This analysis assumes the provisions of the bill addressing felony sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: WP, SLE, EP, AKi, SPa, LR, LCO

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

March 24, 2019

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (Relating to enforcement of the rights of a living child born after an abortion; creating a civil cause of action.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would create a civil cause of action against a physician in certain circumstances and make a physician liable to the State for a civil penalty of not less than \$100,000. The attorney general may bring suit to collect the civil penalty and may recover reasonable attorney's fees.

The Office of Court Administration, Office of the Attorney General and the Texas Medical Board indicate the bill's provisions could be absorbed within existing resources. The Comptroller of Public Accounts indicates the fiscal impact cannot be estimated at this time.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 503 Texas Medical Board

LBB Staff: WP, SLE, LR, AKi, LCO

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 13, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (Relating to the enforcement of the rights of a living unborn child after an abortion; providing a civil penalty; creating a criminal offense.), **Committee Report 2nd House, Substituted**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Family Code to create a criminal offense for a physician or healthcare provider who fails to provide appropriate medical treatment in accordance with the bill's provisions to a child born alive after an abortion or attempted abortion. Under the provisions of the bill, the punishment for this offense would be a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

Creating a new offense for which a criminal penalty can be applied is expected to result in additional demands upon the correctional resources of counties or of the State due to an increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

Source Agencies:

LBB Staff: WP, LM, SPa

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

May 3, 2019

TO: Honorable Lois W. Kolkhorst, Chair, Senate Committee on Health & Human Services

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (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.), **As Engrossed**

The provisions of the bill addressing felony sanctions are the subject of this analysis. The bill would amend the Family Code to create a criminal offense for failing to provide appropriate medical treatment in accordance with the bill's provisions to a child born alive after an abortion. Under the provisions of the bill, the punishment for this offense would be a third degree felony.

A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, an optional fine not to exceed \$10,000.

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Source Agencies:

LBB Staff: WP, LM, SPa

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

86TH LEGISLATIVE REGULAR SESSION

April 5, 2019

TO: Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
Legislative Budget Board

IN RE: HB16 by Leach (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.), **Committee Report 1st House, Substituted**

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A third degree felony is punishable by confinement in prison for a term from 2 to 10 years and, in addition to confinement, may be subject to an optional fine not to exceed \$10,000.

Creating a new offense for which a criminal penalty is applied is expected to result in additional demands upon the correctional resources of counties or of the State due to an increase in the number of individuals placed under supervision in the community or sentenced to a term of confinement within state correctional institutions. This analysis assumes the provisions of the bill addressing felony sanctions would not result in a significant impact on state correctional populations or on the demand for state correctional resources.

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