

House Bill 16
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 parent or legal guardian may:

(1) 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 treatment to the child; and

(2) recover under a civil action described by Subdivision (1):
(A) economic damages in an amount equal to three times the cost of the abortion;

(B) other compensatory damages;

SENATE VERSION (IE)

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 PENALTY; CRIMINAL OFFENSE.

SECTION 2. Section 151.002, Family Code, is amended by adding Subsections (c), (d), (e), (f), and (g) 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 to perform 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 to a hospital. [FA1]

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(C) exemplary damages; and

(D) reasonable and necessary attorney's fees.

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

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

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

(See Sec. 151.002(i) below.)

(h) A physician commits an offense if, in the course of performing or attempting an abortion, the physician with gross negligence, as defined by Section 41.001, Civil Practice and Remedies Code, fails to provide the appropriate medical treatment in accordance with Subsection (c) to a child born alive after the abortion. An offense under this subsection is a felony of the third degree.

(i) A person who has knowledge of a failure to comply with this section may report the failure to comply to the attorney general. The identity and personally identifiable information

SENATE VERSION (IE)

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

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

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

(g) A physician or health care practitioner who violates Subsection (c) by failing to provide the appropriate medical treatment to a child born alive after an abortion or an attempted abortion commits an offense.

An offense under this subsection is a felony of the third degree.

(See Sec. 151.002(f) above.)

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<p><u>of the person reporting the failure to comply with this section are confidential under Chapter 552, Government Code.</u></p> <p><u>(j) In this section, "abortion" has the meaning assigned by Section 245.002, Health and Safety Code.</u></p>		
<p>SECTION 3. Section 151.002, Family Code, as amended by this Act, applies only to a child born alive on or after the effective date of this Act.</p>	<p>SECTION 3. Same as House version.</p>	
<p>No equivalent provision.</p>	<p>SECTION 4. The change in law made by this Act applies only to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.</p>	
<p>SECTION 4. This Act takes effect September 1, 2019.</p>	<p>SECTION 5. Same as House version.</p>	