

BILL ANALYSIS

Senate Research Center

S.B. 23
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Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law, Chapter 151.002 of the Family Code, establishes the rights of a living child after an abortion or premature birth. However, this "right" is not protected by any state civil or criminal enforcement if violated.

S.B. 23 would enforce this right by holding physicians accountable. The bill creates a third degree felony offense for any physician failing to comply with these basic protections for children, and allows for any person reporting offending physicians to the Attorney General to be safeguarded by confidentiality.

S.B. 23 also authorizes the Attorney General to impose a \$100,000 fine and collect any necessary attorney fees for any physician who fails to provide the appropriate medical attention.

S.B. 23 also establishes that a physician-patient relationship exists and requires the same degree of professional, skill, care, and diligence to preserve the life and health of the child as any reasonably diligent and conscientious physician would render to any other child born alive at the same gestational age.

As proposed, S.B. 23 amends current law relating to enforcement of the rights of a living child born after an abortion; creates a civil cause of action; and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 151.002, Family Code, to read as follows:

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

SECTION 2. Amends Section 151.002, Family Code, by adding Subsections (c), (d), (e), (f), (g), and (h), as follows:

(c) Provides that, for purposes of this section, a physician-patient relationship is established between a child born alive after an abortion or attempted abortion and the physician who performed or attempted the abortion. Requires a physician who performed or attempted the abortion to 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) Prohibits a woman on whom an abortion, as defined by Section 245.002 (Definitions), Health and Safety Code, is performed or attempted to be performed from being held liable under this section.

(e) Provides that 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. Authorizes the Texas attorney general (attorney general) to bring a suit to collect the penalty. Authorizes the attorney general, in addition to the civil penalty, to recover reasonable attorney's fees. Provides that the civil penalty described in this subsection is in addition to any other recovery authorized under other law.

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

(g) Provides that 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. Provides that an offense under this subsection is a felony of the third degree.

SECTION 3. Makes application of Section 151.002, Family Code, prospective.

SECTION 4. Provides 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. Provides that 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. Provides that, 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.

SECTION 5. Effective date: September 1, 2019.