

BILL ANALYSIS

C.S.H.B. 16
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current state law provides that children who are born alive after an abortion are legal persons with the same rights as other living children. It is unclear whether a child born alive after an abortion is entitled to the same standard of care as a child born after childbirth from the physician who performed or attempted the abortion resulting in the birth. C.S.H.B. 16 seeks to provide clarity by establishing a physician-patient relationship between a child born alive after an abortion and the physician who performed or attempted the abortion and establishing the standard of care for a physician in these cases. C.S.H.B. 16 provides for the enforcement of its provisions through a civil action, civil penalty, and criminal penalty.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 16 amends the Family Code to establish that, for purposes of state law entitling a living human child born after an abortion or premature birth to the same rights, powers, and privileges granted by state law to any other child born alive after the normal gestation period, a physician-patient relationship is established between a child born alive after an abortion and the physician who performed or attempted the abortion. The bill requires the physician 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, including by ensuring that the child be immediately transferred and admitted to a hospital. The bill creates a third degree felony offense for a physician who, in the course of performing or attempting an abortion, with gross negligence fails to provide the appropriate medical treatment to a child born alive after the abortion. The bill provides for the definitions of "abortion" and "gross negligence" by cross-reference.

C.S.H.B. 16 authorizes a child born alive after an abortion, or the child's parent or legal guardian, to bring a civil action against a physician who performed or attempted the abortion if the physician fails to provide the appropriate medical treatment to the child as required and to recover certain damages and attorney's fees in the civil action. The bill makes a physician who fails to provide the appropriate medical treatment as required liable to the state for a civil penalty in an amount not less than \$100,000, a penalty which is in addition to any other civil liability

incurred under the law. The bill authorizes the attorney general to bring a suit to collect the penalty and to recover, in addition to the civil penalty, reasonable attorney's fees incurred in collecting the penalty. The bill authorizes a physician who prevails in an action brought by a child born alive after an abortion, or the child's parent or legal guardian, to recover reasonable and necessary attorney's fees incurred in defending the action.

C.S.H.B. 16 authorizes a person who has knowledge of a failure to comply with provisions relating to the rights of a living child after an abortion or premature birth to report the failure to the attorney general. The bill makes the identity and personally identifiable information of the reporting person confidential under state public information law. The bill prohibits a woman on whom an abortion is performed from being held liable under provisions relating to the rights of a living child after an abortion or premature birth, except with regard to the liability for attorney's fees as provided for by the bill.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 16 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision requiring the physician who performed or attempted the abortion to ensure that the child born alive is immediately transferred and admitted to a hospital.

The substitute includes a provision creating a third degree felony offense for a physician who, in the course of performing or attempting an abortion, with gross negligence, fails to provide the appropriate medical treatment as required to a child born alive after the abortion.

The substitute revises the damages that may be recovered under a civil action brought by the child born alive after an abortion or the child's parent or legal guardian.