

SUBJECT: Enforcing rights of living unborn child after abortion; creating offenses

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Leach, Krause, Meyer, Neave, Smith, White
3 nays — Farrar, Y. Davis, J. Johnson

WITNESSES: For — Monica Rivera, Archdiocese of Galveston-Houston; Ann Hettinger, Concerned Women For America; Patrick Zurek, Diocese of Amarillo; Martha Doss, Latinos for Trump; Terry Harper, Republican Party of Texas; Kyleen Wright, Texans for Life; Joe Pojman, Texas Alliance for Life; Gus Reyes, Texas Baptists Christian Life Commission; Mia McCord, Texas Conservative Coalition; Nicole Hudgens, Texas Values Action; and 11 individuals; (*Registered, but did not testify:* Julie Fritsch, Archdiocese of Galveston-Houston; Mario Avilies, Diocese of Brownsville; James Tamayo, Diocese of Laredo; Cindy Asmussen, Southern Baptists of Texas Convention; Jenny Andrews, Matthew Cooksey, Amy O'Donnell, and Terry Williams, Texas Alliance for Life; Thomas Schlueter, Texas Apostolic Prayer Network; Jonathan Saenz, Texas Values; Jennifer Allmon, The Texas Catholic Conference of Bishops; and 16 individuals)

Against — Drucilla Tigner, ACLU of Texas; Brenda Koegler, League of Women Voters of Texas; Blake Rocap, NARAL Pro-Choice Texas; (*Registered, but did not testify:* Karen Swenson, American College of Obstetricians and Gynecologist - Texas District; Tina Hester, Jane's Due Process; Jasmine Wang, NARAL Pro Choice Texas; Carisa Lopez, Texas Freedom Network; and 13 individuals)

On — Amanda Cochran-McCall, Office of the Attorney General

BACKGROUND: Family Code sec. 151.002 entitles a living child born alive 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.

Health and Safety Code sec. 245.002 defines abortion as the act of using or prescribing an instrument, drug, medicine, or any other substance, device, or means with the intent to cause an unborn child's death. The term excludes birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

- save the life or preserve the health of an unborn child;
- remove a dead, unborn child whose death was caused by spontaneous abortion; or
- remove an ectopic pregnancy.

DIGEST:

CSHB 16 would establish a physician-patient relationship between a child born alive after an abortion and the physician who performed or attempted the abortion. The bill would require the physician to exercise the same degree of professional skill, care, and diligence to preserve the child's life and health as they would render to any other child born alive at the same gestational age. "Professional skill, care, and diligence" would require the physician who performed or attempted the abortion to ensure that the child born alive was immediately transferred and admitted to a hospital.

The bill would establish a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) against a physician who with gross negligence failed to provide the appropriate medical treatment to a child born alive after an abortion. A physician who failed to provide the appropriate medical treatment also would be liable to the state for a civil penalty of at least \$100,000. The bill would authorize the attorney general to bring a suit to collect the civil penalty and recover reasonable attorney's fees.

CSHB 16 would allow 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 failed to provide the appropriate medical treatment; and

- recover certain damages and attorney's fees.

The bill would allow the physician who prevailed in a civil action to recover certain attorney's fees incurred in defending the action.

The bill would not create any liability for the woman on whom the abortion was performed except to the extent of reasonable attorney's fees incurred by a physician who prevailed in defending a civil action brought by the woman.

A person who knew of noncompliance with the bill's provisions could report the noncompliance to the attorney general. The identity and personally identifiable information of the person who reported it would be exempt from the state's Public Information Act.

The bill would take effect September 1, 2019, and would apply to a child born alive on or after that date.

**SUPPORTERS
SAY:**

CSHB 16 would strengthen protections afforded to newborns who survive an abortion by creating a doctor-patient relationship between the physician and surviving infant upon birth. Establishing the doctor-patient relationship at birth would ensure children who survive abortions receive lifesaving care that every child deserves.

The bill is necessary to ensure physicians are held accountable for their actions when they fail to provide the appropriate level of medical care to newborns born alive after an attempted abortion. The bill would create needed enforcement mechanisms against physicians to ensure doctors provide care in these rare circumstances.

The state has a continuing need to protect human dignity and the rights of unborn children and abortion survivors. The bill would ensure women who seek abortions are shielded from liability.

**OPPONENTS
SAY:**

CSHB 16 would further intimidate physicians who perform and women who seek abortions and restrict a woman's access to abortion.

The bill is unnecessary because current law already provides children born alive after an abortion with the same rights as any other child. The Texas Medical Board already has procedures in place to investigate a physician's misconduct. In recent years, state records show that it is extremely rare for infants to be born after abortion procedures.

CSHB 16 also would interfere in the doctor-patient relationship by requiring physicians to transfer an infant to a hospital. Decision-making regarding medical care should be left up to the physician not the state.