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**SFA****BILL ANALYSIS**

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Senate Bill 395 (as introduced 4-23-03)  
Sponsor: Senator Michelle A. McManus  
Committee: Judiciary

Date Completed: 4-29-03

### **CONTENT**

**The bill would create the "Legal Birth Definition Act" to do all of the following:**

- Specify that a "perinate" would be a person for legal purposes.**
- Provide criminal, civil, and administrative immunity under certain circumstances to a physician, or a person acting under the authority of a physician.**
- Specify legislative findings.**

#### Legal Birth

Under the bill, a perinate would be considered a legally born person for all purposes under the law. "Perinate" would mean a live human being at any point after which any anatomical part of that human being was known to have passed beyond the plane of the vaginal introitus. "Live" would mean demonstrating one or more of the following biological functions: a detectable heartbeat, evidence of breathing, or evidence of spontaneous movement. "Anatomical part" would mean any portion of the human anatomy that had not been severed from the body, but not including the umbilical cord or placenta.

#### Immunity

The bill specifies that a physician, or an individual performing an act, task, or function under a physician's delegatory authority, would be immune from criminal, civil, or administrative liability for performing any procedure that resulted in injury to or the death of a perinate while completing the delivery of the perinate if, in the physician's reasonable medical judgment, the procedure was necessary to save the mother's life and every reasonable effort was made to preserve the life of both the mother and the perinate.

#### Legislative Findings

The bill specifies the following legislative findings:

- "That in Roe v Wade the United States supreme court declared that an unborn child is not a person as understood and protected by the constitution, but any born child is a legal person with full constitutional and legal rights."
- "That in Roe v Wade the United States supreme court made no effort to define birth or place any restrictions on the states in defining when a human being is considered born for legal purposes."
- "That, when any portion of a human being has been vaginally delivered outside his or her mother's body, that portion of the body can only be described as born and the state has a rational basis for defining that human being as born and as a legal person."
- "That the state has a compelling interest in protecting the life of a born person."

## **BACKGROUND**

In 1973, the United States Supreme Court held in *Roe v Wade* (410 U.S. 113) that a state law that criminalized abortions except those necessary to save the mother's life, without regard to pregnancy stage and without recognition of the other interests involved, violated the Due Process Clause of the Fourteenth Amendment. The Court found that the constitutional right of privacy "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy...but that this right is not unqualified and must be considered against important state interests in regulation"; and, "a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision".

The Court then concluded that, for the stage before the approximate end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. For the stage after the approximate end of the first trimester, the state, in promoting its interest in the health of the mother, may regulate the abortion procedure in ways that are reasonably related to maternal health. For the stage subsequent to viability, the state, in promoting its interest in the potentiality of human life, may regulate and even proscribe abortion except when it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many physicians or individuals under the authority of physicians have been found criminally, civilly, or administratively liable for performing a procedure that resulted in injury to or death of a perinate under the circumstances described in this proposal, who instead would be granted immunity.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.