

# **Support HB 3008: Eliminate the Wrongful Birth Cause of Action by Rep. Ron Simmons**

**Goal:** Texas Alliance for Life supports amending Title 4, Civil Practice and Remedies Code, Chapter 71, to statutorily remove the cause of action known as “Wrongful Birth.”

This bill will not change that doctors who intentionally or negligently fail to diagnose prenatal conditions can be sanctioned by the Texas Medical Board. There are also social programs and funding available to help parents with the costs of raising a child with disabilities. These are much more appropriate remedies for parents of disabled children.

## **Background:**

The wrongful birth cause of action is a medical malpractice claim brought by the parents of a child born with birth defects, alleging that negligent treatment or advice deprived them of the opportunity to terminate the pregnancy and abort the child.

In a wrongful birth action, parents seek damages for a child born with birth defects. The claim for damages is based on the cost to parents of raising an unexpectedly disabled child.

## **Texas Law:**

The first lawsuit in the United States recognizing a wrongful birth cause of action was in Texas: *Jacobs v. Theimer*, 519 S.W. 2d 846 (Tex. 1975).

The case involved an action by the parents of a child born with defects caused by the mother contracting rubella in her first month of pregnancy. The claim was that the defendant was negligent in failing to diagnose the rubella in the mother. The Texas Supreme Court allowed damages, but only for expenses reasonably necessary for the care and treatment of the child's impairment. The parents were not awarded any noneconomic damages such as damages for pain and suffering.

At least nine other states have statutorily removed the wrongful birth cause of action.

## **Public Policy:**

The wrongful birth cause of action is bad public policy for several reasons.

- Wrongful birth lawsuits send the message that a child with a disability would have been better off had he or she been aborted.

- That is to say, a child with a disability is not as valuable or worthy of life as a non-disabled child. Texas courts should not be allowed to devalue the life of any child.
- Wrongful birth liability may encourage medical personnel to over-cautiously seek out all potential disabilities and promote abortion in order to avoid liability.
  - This is a step on the way toward eugenic abortions, and should be discouraged.
- Wrongful birth lawsuits make medical professionals liable for a disability they did nothing to cause.
  - The cause of action lies on the premise that the parents' "injury" was giving birth to a child, which physicians should be encouraged to do. A genetic disability is not equivalent to a medical injury. If a physician did nothing to cause the disability, he or she should not be held liable for the costs of raising the disabled child indefinitely.