

BILL ANALYSIS

C.S.H.B. 246
By: Allen
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In Texas, current law does not provide a wrongful death cause of action for the death of an unborn child, and does not provide criminal sanctions for the death or injury of an unborn child. As a result, Texas law does not include necessary remedies or sanctions to address wrongful conduct. Many other states have established such causes of action and criminal sanctions. The purpose of C.S.H.B. 246 is to ensure that Texas law includes an appropriate civil remedy and appropriate criminal sanctions to address wrongful conduct.

RULEMAKING AUTHORITY

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

ANALYSIS

Civil Remedy

C.S.H.B. 246 amends Chapter 71 of the Civil Practices and Remedies Code as follows:

- Defines “death” to include, for an individual who is an unborn child, the failure to be born alive.
- Defines “individual” to include an unborn child at every stage of gestation from fertilization to birth.
- Provides that Subchapter A of Chapter 71 (Wrongful Death) applies only if the individual injured would have been entitled to bring an action for the injury if the individual had lived or had been born alive.
- Provides that Subchapter A of Chapter 71 (Wrongful Death) does not apply to a claim for the death of an individual who is an unborn child that is brought against:
 - 1) the mother of the unborn child;
 - 2) a physician or other licensed health care provider, if the death is the result of a lawful medical procedure performed by the physician or health care provider with the requisite consent and the physician or health care provider exercises the degree of care a physician or health care provider of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community; or
 - 3) a person who dispenses or administers a drug in accordance with the law, if the death is the result of the dispensation or administration of the drug.
- Provides that the changes made by C.S.H.B. 246 apply only to a cause of action that accrues on or after the effective date of the Act.

Criminal Penalties

C.S.H.B. 246 amends the Penal Code as follows:

- Defines “individual” as a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth.
- Defines “death” to include, for an individual who is an unborn child, the failure to be born alive.
- Provides an exception to the application of Chapter 19 (Criminal Homicide) if the death was the death

of an unborn child and the conduct charged is:

- 1) conduct committed by the mother of the unborn child;
 - 2) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure; or
 - 3) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.
- Amends the definitions applicable to Chapter 20 (Kidnapping and Unlawful Restraint) as follows:
 - “Person” means an individual, corporation, or association.
 - “Individual” means a human being who has been born and is alive.
 - Provides an exception to the application of Chapter 22 (Assaultive Offenses) if the conduct is committed against an individual who is an unborn child and is:
 - 1) conduct committed by the mother of the unborn child;
 - 2) a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent, if the death of the unborn child was the intended result of the procedure; or
 - 3) the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.
 - Provides an exception to the application of Section 49.07 (Intoxication Assault) and 49.08 (Intoxication Manslaughter) if the injury or death was the injury or death of an unborn child and the conduct charged is conduct committed by the mother of the unborn child.
 - Provides that the changes in law made by C.S.H.B. 246 apply only to an offense committed on or after the effective date of the Act.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 246 modifies the original by adding language to provide that Subchapter A of Chapter 71 (Wrongful Death) of the Civil Practice and Remedies Code does not apply to a physician or health care provider if the death is the result of a lawful medical procedure performed by the physician or health care provider with the requisite consent and the physician or health care provider exercises the degree of care a physician or health care provider of ordinary prudence or skill would have exercised under the same or similar circumstances in the same or a similar community.