

BILL ANALYSIS

Senate Research Center

S.B. 319
By: Armbrister
State Affairs
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Enrolled

DIGEST AND PURPOSE

Under current Texas law, a person cannot be prosecuted for criminal homicide, assault, or intoxication manslaughter of an unborn child, nor can a person be sued in a civil action for the wrongful death of an unborn child. S.B. 319 amends the Penal Code to allow the prosecution of a person who harms or kills an unborn child, unless the death is the result of a legal medical procedure carried out by a health care provider, the result of a legal drug dispensation or administration, the result of a procedure as part of an assisted reproduction, or the result of an action by the mother. S.B. 319 also amends the Civil Practice and Remedies Code to allow parents to bring suit against a person who harms or kills an unborn child, with the same exceptions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CIVIL REMEDIES

SECTION 1.01. Amends Section 71.001, Civil Practice and Remedies Code, by adding Subdivisions (3) and (4), as follows:

(3) Defines “death” to include, for an individual who is an unborn child, the failure to be born alive.

(4) Defines “individual” to include an unborn child at every stage of gestation from fertilization until birth.

SECTION 1.02. Amends Section 71.003, Civil Practice and Remedies Code, as follows:

Sec. 71.003. New heading: APPLICATION; CERTAIN CONDUCT EXCEPTED. (a) Provides that this subchapter applies only if the injured individual would have been entitled to bring an action for the injury if the individual had lived or had been born alive.

(c) Provides that this subchapter does not apply to a claim for the death of an individual who is an unborn child that is brought against the mother of the unborn child; a physician or other licensed health care provider if the death is the intended result of a lawful medical procedure performed by the physician or provider with requisite consent; a person who dispenses or administers a drug in accordance with law, if the death is the result of the dispensation or administration of the drug; or a physician or other health care provider licensed in this state, if the death directly or indirectly is caused by, associated with, arises out of, or relates to a lawful medical or health care practice or procedure of the physician or the health care provider.

SECTION 1.03. Amends Subchapter A, Chapter 71, Civil Practice and Remedies Code, by adding Section 71.0055, as follows:

Sec. 71.0055. EVIDENCE OF PREGNANCY. Requires the plaintiff, in an action under this subchapter for the death of an individual who is an unborn child, to provide medical or other evidence that the mother of the individual was pregnant at the time of the individual's death.

SECTION 1.04. Makes application of this article prospective.

ARTICLE 2. CRIMINAL PENALTIES

SECTION 2.01. Amends Section 1.07(a), Penal Code, by amending Subdivision (26) and adding Subdivision (49), as follows:

(26) Redefines "individual" to mean a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth, rather than a human being who has been born and is alive.

(49) Defines "death" to include, for an individual who is an unborn child, the failure to be born alive.

SECTION 2.02. Amends Chapter 19, Penal Code, by adding Section 19.06, as follows:

Sec. 19.06. APPLICABILITY TO CERTAIN CONDUCT. Provides that this chapter does not apply to the death of an unborn child if the conduct charged is: committed by the mother of the unborn child; a lawful medical procedure performed by a physician or other licensed health care provider with requisite consent, if the death of the unborn child was the intended result of the procedure; a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

SECTION 2.03. Amends Section 20.01, Penal Code, by adding Subdivisions (4) and (5), as follows:

(4) Defines "person" as an individual, corporation, or association.

(5) Defines "individual" as a human being who has been born alive, notwithstanding Section 1.07.

SECTION 2.04. Amends Chapter 22, Penal Code, by adding Section 22.12, as follows:

Sec. 22.12. APPLICABILITY TO CERTAIN CONDUCT. Provides that this chapter does not apply to conduct charged as having been committed against an individual who is an unborn child if the conduct is: committed by the mother of the unborn child; a lawful medical procedure performed by a physician or other licensed health care provider with requisite consent; a lawful medical procedure performed by a physician or other licensed health care provider with the requisite consent as part of an assisted reproduction as defined by Section 160.102, Family Code; or the dispensation of a drug in accordance with law or administration of a drug prescribed in accordance with law.

SECTION 2.05. Amends Chapter 49, Penal Code, by adding Section 49.12, as follows:

Sec. 49.12. APPLICABILITY TO CERTAIN CONDUCT. Provides that Sections 49.07 and 49.08 do not apply to the injury or death of an unborn child if the conduct charged is committed by the mother of the unborn child.

SECTION 2.06. Amends Chapter 38, Code of Criminal Procedure, by adding Section 38.40, as follows:

Sec. 38.40. EVIDENCE OF PREGNANCY. (a) Requires the prosecution, in a prosecution for the death of or injury to an individual who is an unborn child, to provide medical or other evidence that the mother of the individual was pregnant at the time of the individual's death.

(b) Defines "individual."

SECTION 2.07. Makes application of this article prospective.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2003.