

## **BILL ANALYSIS**

Senate Research Center  
78R1842 SGA-F

S.B. 319  
By: Armbrister  
State Affairs  
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### **DIGEST AND PURPOSE**

Under current Texas law, a person cannot be prosecuted for criminal homicide, assault, or intoxication manslaughter of a fetus, nor can a person be sued in a civil action for the wrongful death of a fetus. As proposed, S.B. 319 amends the Penal Code to allow the prosecution of a person who harms or kills a fetus, unless the death is the intended result of a legal medical procedure carried out by a health care provider or drug provider. S.B. 319 also amends the Civil Practice and Remedies Code to allow parents of a fetus to bring suit against a person who harms or kills the fetus, unless the death is the intended result of a legal medical procedure carried out by a health care provider or drug provider.

### **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; or 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.

SECTION 1.03. 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. CERTAIN CONDUCT EXCEPTED. Provides that it is an exception to the application of this chapter that the death was the death of an unborn child and that the conduct charged is conduct 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; 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. CERTAIN CONDUCT EXCEPTED. Provides that it is an exception to the application of this chapter that the conduct charged is committed against an unborn child and 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 content, if the death of the unborn child was the intended result of the procedure; 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. CERTAIN CONDUCT EXCEPTED. Provides that it is an exception to the application of Section 49.07 or 49.08 that the injury or death was the injury or death of an unborn child and that the conduct charged is committed by the mother of the unborn child.

SECTION 2.06. Makes application of this article prospective.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2003.