

By: Hupp

H.B. No. 143

A BILL TO BE ENTITLED

AN ACT

relating to criminal and civil liability for causing injury to a pregnant woman.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CRIMINAL PENALTIES

SECTION 1.01. Section 22.01, Penal Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) A person commits an offense if the person:

(1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;

(2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; ~~or~~

(3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative; or

(4) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse, who is a pregnant woman.

(g) An offense under Subsection (a)(4) is a felony of the third degree.

(h) It is an affirmative defense to prosecution under Subsection (a)(4) that the conduct charged is an abortion performed

1 by a physician in accordance with Chapter 170, Health and Safety
2 Code, and other applicable law.

3 SECTION 1.02. Section 22.02, Penal Code, is amended by
4 amending Subsection (a) and adding Subsections (d) and (e) to read
5 as follows:

6 (a) A person commits an offense if the person commits
7 assault as defined in Section 22.01 and the person:

8 (1) causes serious bodily injury to another, including
9 the person's spouse; ~~[or]~~

10 (2) causes bodily injury to another, including the
11 person's spouse, who is a pregnant woman and causes her to suffer a
12 miscarriage or stillbirth; or

13 (3) uses or exhibits a deadly weapon during the
14 commission of the assault.

15 (d) In this section:

16 (1) "Miscarriage" means the interruption of the normal
17 development of a fetus, other than by a live birth, resulting in the
18 complete expulsion or extraction from a pregnant woman of a product
19 of human conception.

20 (2) "Stillbirth" means the death of a fetus before the
21 complete expulsion or extraction from its mother, regardless of the
22 duration of the pregnancy, as manifested by the fact that after
23 expulsion or extraction the fetus does not breathe spontaneously or
24 show any other evidence of life such as heartbeat, pulsation of the
25 umbilical cord, or definite movement of voluntary muscles.

26 (e) It is an affirmative defense to prosecution under
27 Subsection (a)(2) that the conduct charged is an abortion performed

1 by a physician in accordance with Chapter 170, Health and Safety
2 Code, and other applicable law.

3 SECTION 1.03. Section 49.07, Penal Code, is amended to read
4 as follows:

5 Sec. 49.07. INTOXICATION ASSAULT. (a) A person commits
6 an offense if the person, by accident or mistake:

7 (1) while operating an aircraft, watercraft, or
8 amusement ride while intoxicated, or while operating a motor
9 vehicle in a public place while intoxicated, by reason of that
10 intoxication causes:

11 (A) serious bodily injury to another; or

12 (B) bodily injury to another who is a pregnant
13 woman and causes her to suffer a miscarriage or stillbirth; or

14 (2) as a result of assembling a mobile amusement ride
15 while intoxicated causes:

16 (A) serious bodily injury to another; or

17 (B) bodily injury to another who is a pregnant
18 woman and causes her to suffer a miscarriage or stillbirth.

19 (b) In this section:

20 (1) "Miscarriage" has the meaning assigned by Section
21 22.02.

22 (2) "Serious[~~,"serious~~] bodily injury" means injury
23 that creates a substantial risk of death or that causes serious
24 permanent disfigurement or protracted loss or impairment of the
25 function of any bodily member or organ.

26 (3) "Stillbirth" has the meaning assigned by Section
27 22.02.

1 (c) Except as provided by Subsection (d), an ~~[An]~~ offense
2 under this section is a felony of the third degree.

3 (d) An offense under Subsection (a)(1)(B) or (a)(2)(B) is a
4 felony of the second degree.

5 SECTION 1.04. The change in law made by this article applies
6 only to an offense committed on or after the effective date of this
7 Act. An offense committed before the effective date of this Act is
8 covered by the law in effect when the offense was committed, and the
9 former law is continued in effect for that purpose. For purposes of
10 this section, an offense was committed before the effective date of
11 this Act if any element of the offense occurred before that date.

12 ARTICLE 2. CIVIL REMEDIES

13 SECTION 2.01. Title 4, Civil Practice and Remedies Code, is
14 amended by adding Chapter 100 to read as follows:

15 CHAPTER 100. MISCARRIAGE OR STILLBIRTH

16 Sec. 100.001. DEFINITIONS. In this chapter:

17 (1) "Miscarriage" means the interruption of the normal
18 development of a fetus, other than by a live birth, resulting in
19 the complete expulsion or extraction from a pregnant woman of a
20 product of human conception.

21 (2) "Stillbirth" means the death of a fetus before the
22 complete expulsion or extraction from its mother, regardless of the
23 duration of the pregnancy, as manifested by the fact that after
24 expulsion or extraction the fetus does not breathe spontaneously or
25 show any other evidence of life such as heartbeat, pulsation of the
26 umbilical cord, or definite movement of voluntary muscles.

27 Sec. 100.002. CAUSE OF ACTION. A person is liable for

1 damages under this chapter if, as a result of the person's wrongful
2 act or negligent act or omission, another person who is a pregnant
3 woman suffers a bodily injury that results in a miscarriage or
4 stillbirth.

5 Sec. 100.003. PERSONS WHO MAY BRING ACTION. The mother or
6 father of the fetus may bring an action under this chapter.

7 Sec. 100.004. DAMAGES. (a) In an action under this chapter,
8 a court may award:

9 (1) compensatory damages, including damages for
10 mental anguish and loss of companionship and society; and

11 (2) exemplary damages under Chapter 41.

12 (b) Damages under this chapter are in addition to other
13 damages that may be awarded under law for the injury to the pregnant
14 woman.

15 Sec. 100.005. ABORTION EXCLUDED. This chapter does not
16 apply to an abortion performed by a physician in accordance with
17 Chapter 170, Health and Safety Code, and other applicable law.

18 SECTION 2.02. Chapter 100, Civil Practice and Remedies Code,
19 as added by this Act, applies only to a cause of action that accrues
20 on or after the effective date of this Act. A cause of action that
21 accrues before the effective date of this Act is governed by the law
22 applicable to the cause of action immediately before the effective
23 date of this Act, and that law is continued in effect for that
24 purpose.

25 ARTICLE 3. EFFECTIVE DATE

26 SECTION 3.01. This Act takes effect September 1, 2003.