

By: Allen, Olivo, Hupp, Wohlgemuth, et al.

H.B. No. 246

Substitute the following for H.B. No. 246:

By: Elkins

C.S.H.B. No. 246

A BILL TO BE ENTITLED

AN ACT

relating to the death of or injury to an unborn child; providing penalties.

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

ARTICLE 1. CIVIL REMEDIES

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

(3) "Death" includes, for an individual who is an unborn child, the failure to be born alive.

(4) "Individual" includes an unborn child at every stage of gestation from fertilization until birth.

SECTION 1.02. Section 71.003, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 71.003. APPLICATION; CERTAIN CONDUCT EXCEPTED. (a) This subchapter applies only if the individual injured would have been entitled to bring an action for the injury if the individual ~~he~~ had lived or had been born alive.

(b) This subchapter applies whether the injury occurs inside or outside this state.

(c) This subchapter 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

1 provider, if the death is the result of a lawful medical procedure
2 performed by the physician or health care provider with the
3 requisite consent and the physician or health care provider
4 exercises the degree of care a physician or health care provider of
5 ordinary prudence and skill would have exercised under the same or
6 similar circumstances in the same or a similar community; or

7 (3) a person who dispenses or administers a drug in
8 accordance with law, if the death is the result of the dispensation
9 or administration of the drug.

10 SECTION 1.03. The changes in law made by this article apply
11 only to a cause of action that accrues on or after the effective
12 date of this Act. A cause of action that accrues before the
13 effective date of this Act is governed by the law as it existed
14 immediately before the effective date of this Act, and that law is
15 continued in effect for that purpose.

16 ARTICLE 2. CRIMINAL PENALTIES

17 SECTION 2.01. Section 1.07(a), Penal Code, is amended by
18 amending Subdivision (26) and adding Subdivision (49) to read as
19 follows:

20 (26) "Individual" means a human being who ~~[has been~~
21 ~~born and]~~ is alive, including an unborn child at every stage of
22 gestation from fertilization until birth.

23 (49) "Death" includes, for an individual who is an
24 unborn child, the failure to be born alive.

25 SECTION 2.02. Chapter 19, Penal Code, is amended by adding
26 Section 19.06 to read as follows:

27 Sec. 19.06. CERTAIN CONDUCT EXCEPTED. It is an exception to

1 the application of this chapter that the death was the death of an
2 unborn child and that the conduct charged is:

3 (1) conduct committed by the mother of the unborn
4 child;

5 (2) a lawful medical procedure performed by a
6 physician or other licensed health care provider with the requisite
7 consent, if the death of the unborn child was the intended result of
8 the procedure; or

9 (3) the dispensation of a drug in accordance with law
10 or administration of a drug prescribed in accordance with law.

11 SECTION 2.03. Section 20.01, Penal Code, is amended by
12 adding Subdivisions (4) and (5) to read as follows:

13 (4) "Person" means an individual, corporation, or
14 association.

15 (5) Notwithstanding Section 1.07, "individual" means
16 a human being who has been born and is alive.

17 SECTION 2.04. Chapter 22, Penal Code, is amended by adding
18 Section 22.12 to read as follows:

19 Sec. 22.12. CERTAIN CONDUCT EXCEPTED. It is an exception to
20 the application of this chapter that the conduct charged is
21 committed against an individual who is an unborn child and is:

22 (1) conduct committed by the mother of the unborn
23 child;

24 (2) a lawful medical procedure performed by a
25 physician or other licensed health care provider with the requisite
26 consent, if the death of the unborn child was the intended result of
27 the procedure; or

1 (3) the dispensation of a drug in accordance with law
2 or administration of a drug prescribed in accordance with law.

3 SECTION 2.05. Chapter 49, Penal Code, is amended by adding
4 Section 49.12 to read as follows:

5 Sec. 49.12. CERTAIN CONDUCT EXCEPTED. It is an exception to
6 the application of Section 49.07 or 49.08 that the injury or death
7 was the injury or death of an unborn child and that the conduct
8 charged is conduct committed by the mother of the unborn child.

9 SECTION 2.06. (a) The changes in law made by this article
10 apply only to an offense committed on or after the effective date of
11 this Act. For purposes of this section, an offense is committed
12 before the effective date of this Act if any element of the offense
13 occurs before the effective date.

14 (b) An offense committed before the effective date of this
15 Act is covered by the law in effect when the offense was committed,
16 and the former law is continued in effect for that purpose.

17 ARTICLE 3. EFFECTIVE DATE

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