

By: Farrar

H.B. No. 1589

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. CIVIL PENALTIES

SECTION 1.01. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100 to read as follows:

CHAPTER 100. MISCARRIAGE OR STILLBIRTH

Sec. 100.001. DEFINITIONS. In this chapter:

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

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

Sec. 100.002. CAUSE OF ACTION. A person is liable for damages under this chapter if, as a result of the person's wrongful act or negligent act or omission, another person who is a pregnant woman suffers a bodily injury that results in a miscarriage or

1 stillbirth.

2 Sec. 100.003. PERSONS WHO MAY BRING ACTION.

3 (a) The pregnant woman may bring an action under this
4 chapter, and

5 (b) Any person who would have become a parent had the
6 pregnancy not resulted in a miscarriage or stillbirth may bring an
7 action under this chapter unless the act of such person which
8 resulted in the pregnancy was done without the consent of the
9 pregnant woman.

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

12 (1) compensatory damages, including damages for
13 mental anguish; and

14 (2) exemplary damages under Chapter 41.

15 (b) Damages under this chapter are in addition to other
16 damages that may be awarded under law for physical injuries to the
17 pregnant woman.

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

21 SECTION 1.02. Section 41.008, Civil Practices and Remedies
22 Code, is amended by adding Subsection (f) to read as follows:

23 (f) Subsection (b) does not apply to a cause of action
24 against a defendant from whom a plaintiff seeks recovery of
25 exemplary damages based on conduct described in Section 100.002 of
26 the Civil Practice and Remedies Code.

27 SECTION 1.03. Chapter 100, Civil Practice and Remedies

1 Code, as added by this Act, applies only to a cause of action that
2 accrues on or after the effective date of this Act. A cause of
3 action that accrues before the effective date of this Act is
4 governed by the law applicable to the cause of action immediately
5 before the effective date of this Act, and that law is continued in
6 effect for that purpose.

7 ARTICLE 2. CRIMINAL REMEDIES

8 SECTION 2.01. Section 22.01, Penal Code, is amended by
9 amending Subsection (a) and adding Subsection (g) to read as
10 follows:

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

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

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

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

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

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

25 SECTION 2.02. Section 22.02, Penal Code, is amended by
26 amending Subsection (a) and adding Subsection (d) to read as
27 follows:

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

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

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

8 (3) uses or exhibits a deadly weapon during the
9 commission of the assault.

10 (d) In this section:

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

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

21 SECTION 2.03. Chapter 22, Penal Code, is amended by adding
22 Section 22.12 to read as follows:

23 Sec. 22.12. CERTAIN CONDUCT EXCEPTED. It is an exception to
24 the application of this chapter that the conduct charged is
25 committed against a pregnant woman and is:

26 (1) a lawful medical procedure, including but not
27 limited to an abortion performed in accordance with Chapter 170,

1 Health and Safety Code or other applicable law, performed by a
2 physician or other licensed health care provider with the requisite
3 consent; or

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

6 SECTION 2.04. Section 49.07, Penal Code, is amended to read
7 as follows:

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

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

14 (A) serious bodily injury to another; or

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

17 (2) as a result of assembling a mobile amusement ride
18 while intoxicated causes:

19 (A) serious bodily injury to another; or

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

22 (b) In this section:

23 (1) "Miscarriage" has the meaning assigned by Section
24 22.02.

25 (2) "Serious [~~,"serious]~~ bodily injury" means injury
26 that creates a substantial risk of death or that causes serious
27 permanent disfigurement or protracted loss or impairment of the

1 function of any bodily member or organ.

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

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

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

8 SECTION 2.05. The change in law made by this article applies
9 only to an offense committed on or after the effective date of this
10 Act. An offense committed before the effective date of this Act is
11 covered by the law in effect when the offense was committed, and the
12 former law is continued in effect for that purpose. For purposes of
13 this section, an offense was committed before the effective date of
14 this Act if any element of the offense occurred before that date.