

By: Armbrister, et al.

S.B. No. 319

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 intended result of a lawful medical
2 procedure performed by the physician or health care provider with
3 the requisite consent;

4 (3) a person who dispenses or administers a drug in
5 accordance with law, if the death is the result of the dispensation
6 or administration of the drug; or

7 (4) a physician or other health care provider licensed
8 in this state, if the death directly or indirectly is caused by,
9 associated with, arises out of, or relates to a lawful medical or
10 health care practice or procedure of the physician or the health
11 care provider.

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

18 ARTICLE 2. CRIMINAL PENALTIES

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

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

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

27 SECTION 2.02. Chapter 19, Penal Code, is amended by adding

1 Section 19.06 to read as follows:

2 Sec. 19.06. CERTAIN CONDUCT EXCEPTED. It is an exception to
3 the application of this chapter that the death was the death of an
4 unborn child and that the conduct charged is:

5 (1) conduct committed by the mother of the unborn
6 child;

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

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

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

15 (4) "Person" means an individual, corporation, or
16 association.

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

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

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

24 (1) conduct committed by the mother of the unborn
25 child;

26 (2) a lawful medical procedure performed by a
27 physician or other health care provider with the requisite consent;

1 or

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

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

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

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

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

18 ARTICLE 3. EFFECTIVE DATE

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