

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. Subchapter A, Chapter 71, Civil Practice and
13 Remedies Code, is amended by adding Section 71.0055 to read as
14 follows:

15 Sec. 71.0055. EVIDENCE OF PREGNANCY. In an action under
16 this subchapter for the death of an individual who is an unborn
17 child, the plaintiff shall provide medical or other evidence that
18 the mother of the individual was pregnant at the time of the
19 individual's death.

20 SECTION 1.04. The changes in law made by this article apply
21 only to a cause of action that accrues on or after the effective
22 date of this Act. A cause of action that accrues before the
23 effective date of this Act is governed by the law as it existed
24 immediately before the effective date of this Act and that law is
25 continued in effect for that purpose.

26 ARTICLE 2. CRIMINAL PENALTIES

27 SECTION 2.01. Subsection (a), Section 1.07, Penal Code, is

1 amended by amending Subdivision (26) and adding Subdivision (49) to
2 read as follows:

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

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

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

10 Sec. 19.06. APPLICABILITY TO CERTAIN CONDUCT. This chapter
11 does not apply to the death of an unborn child if the conduct
12 charged is:

13 (1) conduct committed by the mother of the unborn
14 child;

15 (2) a lawful medical procedure performed by a
16 physician or other licensed health care provider with the requisite
17 consent, if the death of the unborn child was the intended result of
18 the procedure;

19 (3) a lawful medical procedure performed by a
20 physician or other licensed health care provider with the requisite
21 consent as part of an assisted reproduction as defined by Section
22 160.102, Family Code; or

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

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

27 (4) "Person" means an individual, corporation, or

1 association.

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

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

6 Sec. 22.12. APPLICABILITY TO CERTAIN CONDUCT. This chapter
7 does not apply to conduct charged as having been committed against
8 an individual who is an unborn child if the conduct is:

9 (1) committed by the mother of the unborn child;

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

12 (3) a lawful medical procedure performed by a
13 physician or other licensed health care provider with the requisite
14 consent as part of an assisted reproduction as defined by Section
15 160.102, Family Code; or

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

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

20 Sec. 49.12. APPLICABILITY TO CERTAIN CONDUCT. Sections
21 49.07 and 49.08 do not apply to injury to or the death of an unborn
22 child if the conduct charged is conduct committed by the mother of
23 the unborn child.

24 SECTION 2.06. Chapter 38, Code of Criminal Procedure, is
25 amended by adding Section 38.40 to read as follows:

26 Sec. 38.40. EVIDENCE OF PREGNANCY. (a) In a prosecution
27 for the death of or injury to an individual who is an unborn child,

1 the prosecution shall provide medical or other evidence that the
2 mother of the individual was pregnant at the time of the alleged
3 offense.

4 (b) For the purpose of this section, "individual" has the
5 meaning assigned by Section 1.07, Penal Code.

6 SECTION 2.07. (a) The changes in law made by this article
7 apply only to an offense committed on or after the effective date of
8 this Act. For purposes of this section, an offense is committed
9 before the effective date of this Act if any element of the offense
10 occurs before the effective date.

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

14 ARTICLE 3. EFFECTIVE DATE

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 319 passed the Senate on May 22, 2003, by a viva-voce vote; and that the Senate concurred in House amendments on May 31, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 319 passed the House, with amendments, on May 28, 2003, by the following vote: Yeas 112, Nays 15, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor