

1-1 By: Armbrister, et al. S.B. No. 319  
1-2 (In the Senate - Filed January 29, 2003; February 6, 2003,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 May 14, 2003, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; May 14, 2003,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 319 By: Armbrister  
1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the death of or injury to an unborn child; providing  
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 ARTICLE 1. CIVIL REMEDIES

1-14 SECTION 1.01. Section 71.001, Civil Practice and Remedies  
1-15 Code, is amended by adding Subdivisions (3) and (4) to read as  
1-16 follows:

1-17 (3) "Death" includes, for an individual who is an  
1-18 unborn child, the failure to be born alive.

1-19 (4) "Individual" includes an unborn child at every  
1-20 stage of gestation from fertilization until birth.

1-21 SECTION 1.02. Section 71.003, Civil Practice and Remedies  
1-22 Code, is amended to read as follows:

1-23 Sec. 71.003. APPLICATION; CERTAIN CONDUCT EXCEPTED.

1-24 (a) This subchapter applies only if the individual injured would  
1-25 have been entitled to bring an action for the injury if the  
1-26 individual [he] had lived or had been born alive.

1-27 (b) This subchapter applies whether the injury occurs  
1-28 inside or outside this state.

1-29 (c) This subchapter does not apply to a claim for the death  
1-30 of an individual who is an unborn child that is brought against:

1-31 (1) the mother of the unborn child;

1-32 (2) a physician or other licensed health care  
1-33 provider, if the death is the intended result of a lawful medical  
1-34 procedure performed by the physician or health care provider with  
1-35 the requisite consent;

1-36 (3) a person who dispenses or administers a drug in  
1-37 accordance with law, if the death is the result of the dispensation  
1-38 or administration of the drug; or

1-39 (4) a physician or other health care provider licensed  
1-40 in this state, if the death directly or indirectly is caused by,  
1-41 associated with, arises out of, or relates to a lawful medical or  
1-42 health care practice or procedure of the physician or the health  
1-43 care provider.

1-44 SECTION 1.03. The changes in law made by this article apply  
1-45 only to a cause of action that accrues on or after the effective  
1-46 date of this Act. A cause of action that accrues before the  
1-47 effective date of this Act is governed by the law as it existed  
1-48 immediately before the effective date of this Act and that law is  
1-49 continued in effect for that purpose.

1-50 ARTICLE 2. CRIMINAL PENALTIES

1-51 SECTION 2.01. Subsection (a), Section 1.07, Penal Code, is  
1-52 amended by amending Subdivision (26) and adding Subdivision (49) to  
1-53 read as follows:

1-54 (26) "Individual" means a human being who ~~[has been~~  
1-55 ~~born and]~~ is alive, including an unborn child at every stage of  
1-56 gestation from fertilization until birth.

1-57 (49) "Death" includes, for an individual who is an  
1-58 unborn child, the failure to be born alive.

1-59 SECTION 2.02. Chapter 19, Penal Code, is amended by adding  
1-60 Section 19.06 to read as follows:

1-61 Sec. 19.06. CERTAIN CONDUCT EXCEPTED. It is an exception to  
1-62 the application of this chapter that the death was the death of an  
1-63 unborn child and that the conduct charged is:

2-1 (1) conduct committed by the mother of the unborn  
2-2 child;

2-3 (2) a lawful medical procedure performed by a  
2-4 physician or other licensed health care provider with the requisite  
2-5 consent, if the death of the unborn child was the intended result of  
2-6 the procedure; or

2-7 (3) the dispensation of a drug in accordance with law  
2-8 or administration of a drug prescribed in accordance with law.

2-9 SECTION 2.03. Section 20.01, Penal Code, is amended by  
2-10 adding Subdivisions (4) and (5) to read as follows:

2-11 (4) "Person" means an individual, corporation, or  
2-12 association.

2-13 (5) Notwithstanding Section 1.07, "individual" means  
2-14 a human being who has been born and is alive.

2-15 SECTION 2.04. Chapter 22, Penal Code, is amended by adding  
2-16 Section 22.12 to read as follows:

2-17 Sec. 22.12. CERTAIN CONDUCT EXCEPTED. It is an exception to  
2-18 the application of this chapter that the conduct charged is  
2-19 committed against an individual who is an unborn child and is:

2-20 (1) conduct committed by the mother of the unborn  
2-21 child;

2-22 (2) a lawful medical procedure performed by a  
2-23 physician or other health care provider with the requisite consent;  
2-24 or

2-25 (3) the dispensation of a drug in accordance with law  
2-26 or administration of a drug prescribed in accordance with law.

2-27 SECTION 2.05. Chapter 49, Penal Code, is amended by adding  
2-28 Section 49.12 to read as follows:

2-29 Sec. 49.12. CERTAIN CONDUCT EXCEPTED. It is an exception to  
2-30 the application of Section 49.07 or 49.08 that the injury or death  
2-31 was the injury or death of an unborn child and that the conduct  
2-32 charged is conduct committed by the mother of the unborn child.

2-33 SECTION 2.06. (a) The changes in law made by this article  
2-34 apply only to an offense committed on or after the effective date of  
2-35 this Act. For purposes of this section, an offense is committed  
2-36 before the effective date of this Act if any element of the offense  
2-37 occurs before the effective date.

2-38 (b) An offense committed before the effective date of this  
2-39 Act is covered by the law in effect when the offense was committed,  
2-40 and the former law is continued in effect for that purpose.

2-41 ARTICLE 3. EFFECTIVE DATE

2-42 SECTION 3.01. This Act takes effect September 1, 2003.

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