

BILL ANALYSIS

Senate Research Center
76R9746 DLF-D

C.S.S.B. 188
By: Ogden
Criminal Justice
3/19/1999
Committee Report (Substituted)

DIGEST

Currently, Texas law does not provide specific legal measures for a parent who loses an unborn child through abuse or any other wrongful act. Pregnant women who are injured as a result of physical abuse or certain wrongful acts may sustain injury not only to themselves, but also to the unborn child. This bill would create a felony offense for a person who causes bodily injury to a pregnant woman, with increased penalty in cases in which the woman suffers a miscarriage or stillbirth. This bill would also create a civil action for a miscarriage or stillbirth resulting from a wrongful or negligent act or omission.

PURPOSE

As proposed, C.S.S.B. 188 establishes consequences of causing injury to a pregnant woman, and creates certain offenses.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CRIMINAL PENALTIES

SECTION 1.01. Amends Section 22.01, Penal Code, by amending Subsection (a) and adding Subsections (f) and (g), to establish that a person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another, including a person's spouse, who is a pregnant woman. Provides that an offense under Subsection (a)(4) is a felony of the third degree. Provides that it is an affirmative defense to prosecution that the conduct charged is an abortion performed by a physician in accordance with the Medical Practice Act and other applicable law. Makes nonsubstantive changes.

SECTION 1.02. Amends Section 22.02, Penal Code, by amending Subsection (a) and adding Subsections (d) and (e), to establish that a person commits an assault if the person causes bodily injury to another, including the person's spouse, who is pregnant and causes her to suffer a miscarriage or stillbirth. Defines "miscarriage" and "stillbirth." Makes conforming and nonsubstantive changes.

SECTION 1.03. Amends Section 49.07, Penal Code, to set forth conditions by which a person commits an offense by reason of intoxication. Define "miscarriage," "serious bodily injury," and "stillbirth." Provides that an offense under this section is a felony of the third degree, except as provided by Subsection (d). Provides that an offense under Subsection (a)(2) is a felony of the second degree. Makes conforming and nonsubstantive changes.

SECTION 1.04. Makes application of Article 1 as amended by this Act prospective.

ARTICLE 2. CIVIL REMEDIES

SECTION 2.01. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 99, as follows:

CHAPTER 99. MISCARRIAGE OR STILLBIRTH

Sec. 99.001. DEFINITIONS. Defines "miscarriage" and "stillbirth."

Sec. 99.002. CAUSE OF ACTION. Establishes that a person is liable for damages if, as a result

of the person's wrongful act or negligent act or omission, a pregnant woman suffers bodily injury that results in a miscarriage or stillbirth.

Sec. 99.003. PERSONS WHO MAY BRING ACTION. Authorizes the mother or the father of the fetus to bring action.

Sec. 99.004. DAMAGES. Authorizes a court to award compensatory damages and exemplary damages. Provides that damages are in addition to other damages that may be awarded for injury to the pregnant woman.

Sec. 99.005. ABORTION EXCLUDED. Establishes that this chapter does not apply to an abortion performed by a physician in accordance with the Medical Practice Act and other applicable law.

SECTION 2.02. Makes application of Chapter 99, Civil Practice and Remedies Code, and as added by this Act prospective.

ARTICLE 3. EMERGENCY

SECTION 3.01. Emergency clause.
Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.01.

Amends Section 22.01(g), Penal Code, to provide that it is an affirmative defense to prosecution that the conduct charged is an abortion performed by a physician in accordance with the Medical Practice Act.

SECTION 1.02.

Adds Subsection (e), Section 22.02, Penal Code, to make conforming changes.

SECTION 1.03.

Amends Section 49.07, Penal Code, to set forth conditions by which a person commits an offense by reason of intoxication. Defines "miscarriage," "serious bodily injury," and "stillbirth." Provides that an offense under this section is a felony of the third degree, except as provided by Subsection (d). Provides that an offense under Subsection (a)(2) is a felony of the second degree.