

BILL ANALYSIS

Senate Research Center
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S.B. 269
By: Ogden
Criminal Justice
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DIGEST AND PURPOSE

Currently, Texas law does not provide for an increase in penalty for injury to a pregnant woman through a wrongful or negligent act. As proposed, S.B. 269 creates a felony offense for causing bodily injury to a pregnant woman, with an increased penalty if the injury causes the woman to suffer a miscarriage or stillbirth. This bill also expands intoxication assault to include an injury to a pregnant woman which results in a miscarriage or stillbirth. S.B. 269 creates a civil cause of action for a miscarriage or stillbirth resulting from a wrongful or negligent act or omission.

RULEMAKING AUTHORITY

This bill does not expressly 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 (g) and (h) to provide that a person commits a felony offense of the third degree if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse, who is a pregnant woman. Provides that it is an affirmative defense to prosecution under Subsection (a) (4) that the conduct charged is an abortion performed by a physician in accordance with Chapter 170 (Prohibited Acts Regarding Abortion), Health and Safety Code, and other applicable law.

SECTION 1.02. Amends Section 22.02, Penal Code, by amending Subsection (a) and adding Subsection (d) and (e) to provide that a person commits an offense if the person commits an assault as defined in Section 22.01 and the person causes bodily injury to another, including the person's spouse, who is a pregnant woman and causes her to suffer a miscarriage or stillbirth. Provides that it is an affirmative defense to prosecution under Subsection (a) (2) that the conduct charged is an abortion performed by a physician in accordance with Chapter 170, Health and Safety Code, and other applicable law. Defines "miscarriage" and "stillbirth."

SECTION 1.03. Amends Section 49.07, Penal Code, by providing that a person commits an offense if the person, by accident or mistake, causes bodily injury to another who is a pregnant woman and causes her to suffer a miscarriage or stillbirth, while operating an aircraft, watercraft, or amusement ride; operating a motor vehicle in a public place; or assembled a mobile amusement ride while intoxicated. Provides that an offense under Subsection (a) (1) (B) or (a) (2) (B) is a felony of the second degree. Provides that except as provided by Subsection (d), an offense under this section is a felony of the third degree. Makes conforming and nonsubstantive changes.

SECTION 1.04. Makes the change in law made by this article 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. Provides that 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 stillbirth.

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

Sec. 99.004. DAMAGES. Authorizes a court, in an action under this chapter, to award compensatory damages, including damages for mental anguish and loss of companionship and society and exemplary damages under Chapter 41. Provides that damages under this chapter are in addition to other damages that may be awarded under law for the injury to the pregnant woman.

Sec. 99.005. ABORTION EXCLUDED. Provides that this chapter does not apply to an abortion performed by a physician in accordance with Chapter 170, Health and Safety Code, and other applicable law.

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

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2001.