

## **BILL ANALYSIS**

Senate Research Center

S.B. 142  
By: Harris  
Health and Human Services  
3-21-97  
As Filed

### **DIGEST**

Currently, an individual is defined as "a human being who has been born and is alive." However, this definition provides no protection for a fetus which dies before birth through the reckless, negligent, or intentional behavior of a third party. A 1994 Dallas case in which a driver ran a red light and hit a pregnant woman in labor, causing the child to be stillborn, has raised questions about the classification of a fetus as a human being and the compensatory damages due in the case of injury or death to a viable fetus. In the Dallas case, the driver who hit the woman's car received a ticket for failing to stop at a red light. This legislation allows the mother and father of a viable fetus to claim compensatory and exemplary damages against a person who causes the death of a viable fetus through a wrongful or negligent act, and allows for criminal penalties against a person who causes the death of a viable fetus through operating a motor vehicle, watercraft, or aircraft while intoxicated.

### **PURPOSE**

As proposed, S.B. 142 establishes liability and penalties for a person's wrongful or negligent act that causes the death of a viable fetus.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. CIVIL REMEDIES**

SECTION 1.01. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 99, as follows:

#### **CHAPTER 99. DEATH OF A VIABLE FETUS**

Sec. 99.001. **DEFINITIONS.** Defines "fetus" and "viable."

Sec. 99.002. **CAUSE OF ACTION.** Provides that a person is liable for damages for the person's wrongful or negligent act or omission that causes a viable fetus not to be born alive.

Sec. 99.003. **PERSONS WHO MAY BRING ACTION.** Authorizes the natural 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, medical expenses, and exemplary damages under Chapter 41.

Sec. 99.005. **CERTAIN CONDUCT EXCLUDED.** Provides that Section 99.002 does not apply to a wrongful or negligent act or omission of the mother of the fetus; a medical procedure performed by a physician or other licensed health care provider at the request of the mother of the fetus or the mother's legal guardian; or the dispensation or administration of a drug prescribed in accordance with law.

SECTION 1.02. Makes application of this Act prospective.

## ARTICLE 2. CRIMINAL PENALTIES

SECTION 2.01. Amends Section 1.07(a)(26), Penal Code, to make a conforming change.

SECTION 2.02. Amends Section 19.01, Penal Code, by adding Subsection (c), to define "fetus," "individual," and "viable."

SECTION 2.03. Amends Chapter 19, Penal Code, by adding Section 19.06, to provide that it is an affirmative defense to prosecution under this chapter for the death of a fetus that the conduct charged is an act of the mother of the fetus; a medical procedure performed by a physician or other licensed health care provider at the request of the mother of the fetus or the mother's legal guardian; or the dispensation or administration of a drug prescribed in accordance with law.

SECTION 2.04. Amends Section 49.08, Penal Code, by amending Subsection (a) and adding Subsection (c), to define "fetus," "individual," and "viable." Makes a nonsubstantive change.

SECTION 2.05. Makes application of this Act prospective.

## ARTICLE 3. EFFECTIVE DATE; EMERGENCY

SECTION 3.01. Effective date: September 1, 1997.

SECTION 3.02. Emergency clause.