

Bill No. SB 1974

Barcode 224420

CHAMBER ACTION

Senate

House

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

WD  
04/22/2005 07:27 PM

.  
. .  
. .  
. .  
. .  
. .

The Committee on Judiciary (Posey) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 768.38, Florida Statutes, is created to read:

768.38 Right of action for prenatal death caused by negligence of another.--

(1)(a) In any lawsuit filed in this state under current law, other than a claim for medical negligence as defined in s. 766.106(1), in which it is alleged that a pregnancy was wrongfully ended by the negligence of another person or entity, the trier of fact may consider the following evidence in evaluating a claim for damages for the mental pain and suffering of the parents:

1. Characteristics of the unborn fetus, including, but not limited to, the sex and the name chosen before the pregnancy was negligently terminated; and

Bill No. SB 1974

Barcode 224420

1           2. The circumstances surrounding the loss of the  
2 pregnancy.

3           (b) The fetus may be referred to as a son or daughter,  
4 as a child, or by its chosen name.

5  
6 Nothing contained in this subsection creates a new cause of  
7 action not otherwise recognized by current law. The intent of  
8 this subsection is to codify existing law and, therefore, it  
9 shall neither expand nor restrict the law as it exists on the  
10 effective date of this act.

11           (2) As to a claim for medical negligence as defined in  
12 s. 766.106(1), when a viable fetus is stillborn as a result of  
13 the negligence of a person or entity, the parents of the  
14 stillborn fetus may bring an action for negligent stillbirth.

15           (a) Damages recoverable under this subsection shall be  
16 limited to the following:

- 17           1. Medical expenses incident to the stillbirth; and
- 18           2. Noneconomic damages to each parent for mental pain  
19 and suffering and emotional distress suffered by each parent  
20 incident to the stillbirth, but not for the life expectancy of  
21 the parent.

22           (b) For purposes of this subsection, the term  
23 "stillbirth" means the loss of a viable fetus during the birth  
24 process in the third trimester of pregnancy as defined by s.  
25 390.011(8). There shall be no action for wrongful death of a  
26 stillborn fetus under this subsection. A woman may not be sued  
27 under this subsection for the termination of her own  
28 pregnancy.

29           (c) A health care provider may not be sued under this  
30 section for termination of the mother's pregnancy for which  
31 the consent of the pregnant woman, or the person authorized by

Bill No. SB 1974

Barcode 224420

1 law to act on her behalf, has been obtained or for which such  
2 consent is implied by law.

3 (d) One parent may not sue another parent for  
4 negligent infliction of emotional distress suffered as a  
5 result of a stillbirth.

6 Section 2. This act shall take effect upon becoming a  
7 law and applies to all actions in which the stillbirth occurs  
8 after the effective date of the act.

9  
10

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete everything before the enacting clause

14

15 and insert:

16 A bill to be entitled  
17 An act relating to a cause of action for  
18 prenatal death caused by negligence; creating  
19 s. 768.38, F.S.; providing for the  
20 admissibility of certain evidence in evaluating  
21 a claim for damages for the mental pain and  
22 suffering of the parents in an action alleging  
23 that a pregnancy was wrongfully ended by the  
24 negligence of another; providing intent;  
25 providing a cause of action for negligent  
26 stillbirth; providing limitations on  
27 recoverable damages; defining the term  
28 "stillbirth"; exempting certain persons from  
29 liability in specified circumstances; providing  
30 applicability; providing an effective date.

31