

By Senator Posey

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A bill to be entitled

An act establishing a cause of action for the negligent infliction of emotional distress arising out of the loss of a pregnancy because of the negligence of another; providing for damages; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Right of action for loss of pregnancy due to negligence.--

(1) When a pregnancy is wrongfully ended by the negligence of another person or entity, the mother and father of the fetus may bring an action for the negligent infliction of emotional distress irrespective of whether there is physical harm. Neither parent, however, may bring an action under this section against the other parent.

(2) This section allows each parent to recover for his or her own mental pain and suffering, emotional distress, and any economic damages that arise as a result of the loss of pregnancy. The damages that a parent may recover under this section include the following:

(a) Medical expenses arising out of the pregnancy; and

(b) Damages for the mental pain and suffering of the parent, which include, but are not limited to, compensation for the lost hopes, dreams, and expectations for what life may have been like had the pregnancy resulted in a live birth. In evaluating a claim for damages for the mental pain and suffering and emotional distress of the parent, the trier of fact may consider the characteristics of the unborn fetus,

1 including, but not limited to, the gender and the name chosen  
2 before the pregnancy was negligently terminated, and the  
3 circumstances surrounding the loss of the pregnancy.

4 (4) A pregnant woman may not be sued under this  
5 section for the lawful termination of her own pregnancy.

6 (5) A health care provider may not be sued under this  
7 section for non-negligent termination of the mother's  
8 pregnancy following the mother's informed consent after the  
9 mother has been provided with accurate medical information.

10 Section 2. This act shall take effect upon becoming a  
11 law.

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14 SENATE SUMMARY

15 Establishes a cause of action for the negligent  
16 infliction of emotional distress arising out of the loss  
17 of a pregnancy because of the negligence of another.  
18 Provides for damages. Provides exceptions.  
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