

By the Committee on Judiciary; and Senator Posey

590-2250-05

1 A bill to be entitled
2 An act relating to a cause of action for
3 prenatal death caused by negligence; creating
4 s. 768.38, F.S.; providing for the
5 admissibility of certain evidence in evaluating
6 a claim for damages for the mental pain and
7 suffering of the parents in an action alleging
8 that a pregnancy was wrongfully ended by the
9 negligence of another; providing findings and
10 intent; providing an effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. The Legislature finds that current law
15 inadequately addresses rights of action related to prenatal
16 deaths resulting from negligent acts in other than medical or
17 criminal situations.
18 Section 2. Section 768.38, Florida Statutes, is
19 created to read:
20 768.38 Right of action for prenatal death caused by
21 negligence of another.--
22 (1) In any lawsuit filed in this state under current
23 law, where medical negligence as defined in s. 766.106(1) is
24 not at issue and without expanding or restricting current law
25 with regard to medical negligence, when it is alleged that a
26 pregnancy was wrongfully ended by the negligence of another
27 person or entity, the trier of fact may consider the following
28 evidence in evaluating a claim for damages for the mental pain
29 and suffering of the parents:
30
31

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (a) Characteristics of the unborn fetus, including,
2 but not limited to, the sex and the name chosen before the
3 pregnancy was negligently terminated; and

4 (b) The circumstances surrounding the loss of the
5 pregnancy.

6 (2) The fetus may be referred to as a son or daughter,
7 as a child, or by its chosen name.

8 Section 3. This act shall take effect upon becoming a
9 law and applies to all actions in which the stillbirth occurs
10 after the effective date of the act.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1974

15 This committee substitute:

- 16 -- Deletes language that authorized recovery of economic
17 damages related to the loss of pregnancy;
18 -- Provides legislative findings;
19 -- Additionally authorizes admission of evidence relating to
20 the sex of the unborn fetus, and references to the unborn
21 fetus as a son, daughter, or as a child;
22 -- Deletes language that created an exception from suit for
23 a pregnant woman who lawfully terminates her pregnancy
24 and a health care provider;
25 -- Provides that these provisions do not expand or restrict
26 existing law, and do not apply to medical negligence
27 cases; and
28 -- Provides that these provisions apply to all actions in
29 which the stillbirth occurs after the effective date of
30 the committee substitute.
31