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A bill to be entitled  
 An act relating to wrongful death of a viable fetus;  
 amending s. 768.18, F.S.; revising and providing  
 definitions; amending s. 768.19, F.S.; applying the  
 Florida Wrongful Death Act to viable fetuses in the third  
 trimester of pregnancy; providing an exception for an  
 abortion permitted by law; providing an exception for  
 obstetrical services meeting certain conditions; providing  
 an exception for acts by physicians and medical  
 institutions where there is no medical reason to be aware  
 of the mother's pregnancy; providing an effective date.

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

Section 1. Subsection (2) of section 768.18, Florida  
 Statutes, is amended, and subsection (6) is added to said  
 section, to read:

768.18 Definitions.--As used in ss. 768.16-768.26:

(2) "Minor children" means children under 25 years of age,  
 notwithstanding the age of majority, and includes viable  
 fetuses.

(6) "Viable fetus" means a fetus of a mother in the third  
 trimester of pregnancy, as defined in s. 390.011, that has  
 become capable of independent life.

Section 2. Section 768.19, Florida Statutes, is amended to  
 read:

768.19 Right of action.--

28           (1) When the death of a person is caused by the wrongful  
 29 act, negligence, default, or breach of contract or warranty of  
 30 any person, including those occurring on navigable waters, and  
 31 the event would have entitled the person injured to maintain an  
 32 action and recover damages if death had not ensued, the person  
 33 or watercraft that would have been liable in damages if death  
 34 had not ensued shall be liable for damages as specified in this  
 35 act notwithstanding the death of the person injured, although  
 36 death was caused under circumstances constituting a felony.

37           (2)(a) When the death of a viable fetus is caused by the  
 38 wrongful act, negligence, default, or breach of contract or  
 39 warranty of any person, including those occurring on navigable  
 40 waters, and the event would have entitled the viable fetus to  
 41 maintain an action and recover damages if:

42           1. The viable fetus had been born alive, as defined in s.  
 43 382.002, prior to the act, negligence, default, or breach of  
 44 contract or warranty on which the claim is based; and

45           2. Death had not ensued,  
 46  
 47 the person or watercraft that would have been liable in damages  
 48 if death had not ensued shall be liable for damages as specified  
 49 in this act notwithstanding the death of the viable fetus,  
 50 although death was caused under circumstances constituting a  
 51 felony.

52           (b) There shall be no cause of action under this act  
 53 against a physician or a medical institution for the wrongful  
 54 death of a viable fetus caused by an abortion where the abortion  
 55 was permitted by law and the requisite consent was lawfully

56 given, provided, however, that a cause of action is not  
57 prohibited where the fetus is born alive but subsequently dies.

58 (c) There shall be no cause of action under this act  
59 against a physician or a medical institution for the wrongful  
60 death of a viable fetus caused by the performance of obstetrical  
61 services where the services were permitted by law, the requisite  
62 consent was lawfully given, and the services were performed with  
63 the care required under the applicable standard of care.

64 (d) There shall be no cause of action under this act  
65 against a physician or a medical institution for the wrongful  
66 death of a viable fetus based on the alleged misconduct of the  
67 physician or medical institution where the physician or  
68 institution did not know and, under the applicable standard of  
69 care, had no medical reason to know of the pregnancy of the  
70 mother of the fetus.

71 Section 3. This act shall take effect July 1, 2005.