

HB 839

2005
CS

CHAMBER ACTION

1 The Civil Justice Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to a cause of action for the negligent
7 infliction of emotional distress arising out of the loss
8 of a pregnancy due to the negligence of another; creating
9 s. 768.38, F.S.; creating a cause of action when a
10 pregnancy is wrongfully ended by negligence regardless of
11 physical impact; providing that each parent may recover
12 damages; providing for types of damages that may be
13 recovered; providing exceptions; providing an effective
14 date.

15
16 Be It Enacted by the Legislature of the State of Florida:

17
18 Section 1. Section 768.38, Florida Statutes, is created to
19 read:

20 768.38 Right of action for loss of pregnancy due to
21 negligence.--

22 (1) When a pregnancy is wrongfully ended by the negligence
23 of another person or entity, the mother and father of the fetus

HB 839

2005
CS

24 may bring a cause of action for the negligent infliction of
25 emotional distress irrespective of whether there is a physical
26 impact. Neither parent, however, may bring a cause of action
27 under this section against the other parent.

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

33 (a) Medical expenses arising out of the pregnancy.

34 (b) Damages for the mental pain and suffering of the
35 parent, which include, but are not limited to, compensation for
36 the lost hopes, dreams, and expectations for what life may have
37 been like had the pregnancy resulted in a live birth. In
38 evaluating a claim for damages for the mental pain and suffering
39 and emotional distress of the parent, the trier of fact may
40 consider the characteristics of the unborn fetus, including, but
41 not limited to, the sex and the name chosen before the pregnancy
42 was negligently terminated and the circumstances surrounding the
43 loss of the pregnancy.

44 (3) A pregnant woman may not be sued under this section
45 for the termination of her own pregnancy.

46 (4) A health care provider may not be sued under this
47 section for nonnegligent termination of the mother's pregnancy
48 under the applicable standard of care for which the consent of
49 the pregnant woman, or a person authorized by law to act on her
50 behalf, has been obtained, or for which such consent is implied
51 by law.

HB 839

2005
CS

52 | Section 2. This act shall take effect upon becoming a law. |