

By Senator Posey

24-44-06

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A bill to be entitled
An act relating to a cause of action for prenatal death caused by negligence; providing legislative findings; creating s. 768.38, F.S.; providing for the admissibility of certain evidence in evaluating a claim for damages for the mental pain and suffering of the parents in an action alleging that a pregnancy was wrongfully ended by the negligence of another; providing an effective date.

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

Section 1. The Legislature finds that current law inadequately addresses rights of action related to prenatal death resulting from negligent acts in a situation other than a medical or criminal situation.

Section 2. Section 768.38, Florida Statutes, is created to read:

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

(1) In any lawsuit filed in this state under current law, if medical negligence as defined in s. 766.106(1) is not at issue, and without expanding or restricting current law with regard to medical negligence, when 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 (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 on or after the effective date of the act.

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