

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 408, L.D. 551, Bill, "An Act to Allow Recovery for Wrongful Death of Unborn Children"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Allow Recovery for Wrongful Death of an Unborn Viable Fetus'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'18-A MRSA §2-804, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a) Whenever the death of a person or an unborn viable fetus shall be caused by a wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then the person or the corporation that would have been liable if death had not ensued, other than the mother if the death was the death of an unborn viable fetus, shall be liable for damages as provided in this section, notwithstanding the death of the person or unborn viable fetus injured and although the death shall have been caused under such circumstances as shall amount to a felony.

(1) There is no cause of action under this subsection against a health care practitioner or health care provider for the wrongful death of an unborn viable fetus caused by an abortion if the abortion was permitted by law and required consent was lawfully given.

There is no cause of action under this subsection against a health care practitioner or health care provider for the wrongful death of an unborn viable fetus based on the

1 alleged professional negligence of the health care
2 practitioner or health care provider when the health care
3 practitioner or health care provider did not know and, under
4 the applicable standard of good medical care, had no medical
5 reason to know of the pregnancy of the mother.

7 (2) This subsection may not be construed to permit or
8 require any person to compel a pregnant woman to undergo
9 medical treatment to benefit the unborn viable fetus.

11 (3) This subsection does not affect any criminal statute.

13 (4) Wrongful death of an unborn viable fetus is not a
14 medical examiner case as defined in Title 22, section 3025.'

17 STATEMENT OF FACT

19 This amendment revises the bill to apply to only viable but
20 unborn fetuses rather than any fetus. Whether the fetus was
21 viable is a question of fact that is subject to proof in each
22 case.

23 This amendment limits who can be held liable for the
24 wrongful death of a viable fetus by providing that the mother
25 cannot be held liable for any actions that result in the death of
26 her viable fetus.

29 This amendment does not create a cause of action against any
30 health care practitioner or health care provider for any abortion
31 permitted by law and for which the required consent was lawfully
32 given. In addition, there is no cause of action if the health
33 care practitioner or health care provider did not know of the
34 pregnancy and, under the applicable standard of care, had no
35 medical reason to know of the pregnancy, for any alleged
36 professional negligence. The terms "health care practitioner,"
37 "health care provider" and "professional negligence" are borrowed
38 from the Maine Health Security Act.

39 This amendment does not apply to the loss of a nonviable
40 fetus and has no relevance to abortions of nonviable fetuses.

43 In enacting this amendment, the Legislature does not intend
44 to affect the interpretation or enforcement of any criminal
45 statute.

47 This amendment is not intended to provide grounds for a
48 doctor, hospital or any other person to compel a pregnant woman
49 to undergo any kind of medical treatment for the benefit of the
viable fetus.

COMMITTEE AMENDMENT "A" to H.P. 408, L.D. 551

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This amendment provides that the wrongful death of an unborn viable fetus does not require the medical examiner to complete an investigation and issue a certificate.

Reported by the Majority of the Committee on Judiciary
Reproduced and distributed under the direction of the Clerk of the
House
6/7/89

(Filing No. H-429)