

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

---

Legislative Document

No. 551

H.P. 408

House of Representatives, March 6, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads 'Ed Pert'.

EDWIN H. PERT, Clerk

Presented by Representative PARADIS of Augusta.

Cosponsored by Senator BERUBE of Androscoggin and Senator COLLINS of Aroostook.

---

STATE OF MAINE

---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

---

**An Act to Allow Recovery for Wrongful Death of Unborn Children.**

---



1 **Be it enacted by the People of the State of Maine as follows:**

3 **18-A MRSA §2-804, sub-§(a)**, as enacted by PL 1979, c. 540,  
5 §1, is amended to read:

7 (a) Whenever the death of a person shall be caused by a  
9 wrongful act, neglect or default, and the act, neglect or default  
11 is such as would, if death had not ensued, have entitled the  
13 party injured to maintain an action and recover damages in  
15 respect thereof, then the person or the corporation that would  
17 have been liable if death had not ensued shall be liable for  
19 damages as provided in this section, notwithstanding the death of  
21 the person injured and although the death shall have been caused  
23 under such circumstances as shall amount to a felony. For the  
25 purposes of this section, "person" includes born and unborn  
27 persons.

19 **STATEMENT OF FACT**

21 In 1988 the Maine Supreme Court denied damages for the  
23 wrongful death of an unborn child, basing its ruling on an  
25 interpretation of the language in Maine's Probate Code which gave  
the word "person" a "common sense meaning of 'one born alive.'"

27 The dissenting judges noted that this interpretation allows  
29 damages if an unborn child is injured in the womb but not if the  
child dies.

31 Specifying that "person" includes unborn persons as it  
33 applies to wrongful death corrects this problem.