

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1193

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H.P. 837

House of Representatives, March 26, 2013

**An Act To Allow a Wrongful Death Cause of Action for the Death of  
an Unborn Child**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative VOLK of Scarborough.  
Cosponsored by Senator TUTTLE of York and  
Representatives: BEAVERS of South Berwick, CASAVANT of Biddeford, ESPLING of New  
Gloucester, GUERIN of Glenburn, SHORT of Pittsfield, TIMBERLAKE of Turner, VILLA of  
Harrison.

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

2 **Sec. 1. 18-A MRSA §1-302, sub-§(a)**, as amended by PL 2003, c. 618, Pt. B, §4  
3 and affected by §20, is further amended to read:

4 (a). To the full extent provided in sections 3-105, 5-102 and 5-402, the court has  
5 jurisdiction over all subject matter relating to (1) estates of decedents, including  
6 construction of wills and determination of heirs and successors of decedents and estates  
7 of protected persons; (2) protection of minors and incapacitated persons; ~~and~~ (3) trusts;  
8 and (4) estates of unborn viable fetuses in wrongful death actions pursuant to section  
9 2-804, including determination of heirs.

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

12 (a). Whenever the death of a person ~~shall be~~ or an unborn viable fetus is caused by a  
13 wrongful act, neglect or default, and the act, neglect or default is such as would, if death  
14 had not ensued, have entitled the party injured to maintain an action and recover damages  
15 in respect thereof, then the person or the corporation that would have been liable if death  
16 had not ensued ~~shall be, other than the mother if the death was the death of an unborn~~  
17 viable fetus, is liable for damages as provided in this section, notwithstanding the death of  
18 the person or unborn viable fetus injured and although the death ~~shall~~ may have been  
19 caused under such circumstances as ~~shall~~ amount to a felony. For purposes of this  
20 subsection, an unborn viable fetus is a fetus that has reached the 12th week of gestation or  
21 beyond.

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

26 There is no cause of action under this subsection against a health care practitioner or  
27 health care provider for the wrongful death of an unborn viable fetus based on the  
28 alleged professional negligence of the health care practitioner or health care provider  
29 when the health care practitioner or health care provider did not know and, under the  
30 applicable standard of good medical care, had no medical reason to know of the  
31 pregnancy of the mother.

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

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

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

1 **SUMMARY**

2 This bill provides for a cause of action for the wrongful death of an unborn viable  
3 fetus. The bill specifies that such an action must be brought in Probate Court. An unborn  
4 viable fetus is a fetus that has reached the 12th week of gestation or beyond.

5 The bill specifies that a cause of action for the wrongful death of an unborn viable  
6 fetus does not exist:

- 7 1. Against the mother;
- 8 2. Against a health care practitioner or health care provider performing an abortion  
9 permitted by law and for which required consent was given; or
- 10 3. Against a health care practitioner or health care provider if the health care  
11 practitioner or health care provider did not know of the pregnancy and, under the  
12 applicable standard of care, had no medical reason to know of the pregnancy.