



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 327

H.P. 241

House of Representatives, January 31, 2017

**An Act To Allow a Wrongful Death Cause of Action for the Death of
a Viable Fetus**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative ESPLING of New Gloucester.
Cosponsored by Senator VOLK of Cumberland and
Representatives: AUSTIN of Gray, GUERIN of Glenburn, MARTIN of Eagle Lake,
STANLEY of Medway, SUTTON of Warren, TURNER of Burlington.

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~~ would amount to a felony. For purposes of this
20 subsection, an unborn viable fetus is a fetus that has reached 24 or more weeks of
21 gestation.

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 described in Title 22, section 3025.

37 **SUMMARY**

38 This bill provides for a cause of action for the wrongful death of an unborn viable
39 fetus. The bill specifies that such an action must be brought in Probate Court. The bill

1 provides that an unborn viable fetus is a fetus that has reached 24 or more weeks of
2 gestation.

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

5 1. Against the mother;

6 2. Against a health care practitioner or health care provider performing an abortion
7 permitted by law and for which required consent was given; or

8 3. Against a health care practitioner or health care provider if the health care
9 practitioner or health care provider did not know of the pregnancy and, under the
10 applicable standard of care, had no medical reason to know of the pregnancy.