

## 2012 SESSION

### LEGISLATION NOT PREPARED BY DLS HOUSE SUBSTITUTE

12105413D

#### HOUSE BILL NO. 1

#### FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate McClellan  
on February 13, 2012)

(Patron Prior to Substitute—Delegate Marshall, R.G.)

*A BILL to amend and reenact § 8.01-50 of the code of Virginia, relating to wrongful death of an unborn child.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-50 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-50. Action for death by wrongful act; how and when to be brought.

A. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, or of any ship or vessel, *or the death of an unborn child caused by a wrongful act, neglect, or default of any person or corporation, or of any ship or vessel to the pregnant woman/mother*, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action, or to proceed in rem against such ship or vessel or in personam against the owners thereof or those having control of her, and to recover damages in respect thereof, then, and in every such case, the person who, or corporation or ship or vessel which, would have been liable, if death had not ensued, shall be liable to an action for damages, or, if a ship or vessel, to a libel in rem, and her owners or those responsible for her acts or defaults or negligence to a libel in personam, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances, as amount in law to a felony.

B. Every such action under this section shall be brought by and in the name of the personal representative of such deceased person within the time limits specified in § 8.01-244.

C. If the deceased person was an infant who was in the custody of a parent pursuant to an order of court or written agreement with the other parent, administration shall be granted first to the parent having custody; however, that parent may waive his right to qualify in favor of any other person designated by him. If no such parent or his designee applies for administration within thirty days from the death of the infant, administration shall be granted as in other cases.

D. *Nothing in this section shall be interpreted as creating a cause of action against a woman for directly or indirectly harming her unborn child.*

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