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LB 294

SENATOR BOURNE: Okay. So a death of an unborn child could result by an accident or something other than a felony and there still might be a civil action that could be brought under this 30-809.

SENATOR FOLEY: Yes, that's correct.

SENATOR BOURNE: Okay. Before, when you had had another bill last year, which I actually supported, if you recall, and helped you obtain its passage, I had a scenario where I was actually criticized for that scenario, but what it was, was say an individual didn't scoop their sidewalk and, again, what it was, was the law says that you have to have your sidewalk to pavement in 24 hours, and I had an analogy or a scenario that I asked you about. And say that individual didn't actually scoop that sidewalk and a person fell and the baby was killed as a result of that. And, again, I was criticized for that scenario, even though I still believe that that, under the initial version of the bill, could have happened, although after we worked on the bill that's not the case. But I guess what I'm asking you here is what's contemplated. So any time a child is...in utero is killed, whether accidental, intentional, that a civil action could be brought against the perpetrator of that?

SENATOR FOLEY: Well, no, I wouldn't say any time. In the hypothetical that you've posed to me, let's just say that your neighbor is walking over to your home on a winter's day carrying their newborn baby because they want to show their newborn baby to you, and she slips on that sidewalk, falls and the baby is killed. Your homeowners' policy might be very important to you at that point because, potentially, there could be an action brought against you for the death of that born child. This law would work the same way with an unborn child. It would treat the unborn the same as the born in that particular hypothetical. But let's recognize that in many instances an unborn child's life ends simply because of miscarriage. Miscarriage is a naturally occurring event, particularly earlier in pregnancy. So as you get earlier and earlier into pregnancy, the burden of proof is going to go way, way up on these kinds of cases. I mean as we look out across the country at the kinds of cases