

By Representative Brutus

1 A bill to be entitled
2 An act relating to wrongful death; amending s.
3 768.21, F.S.; deleting a provision precluding
4 recovery for pain and suffering for wrongful
5 death with respect to medical malpractice by
6 certain persons; providing an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 768.21, Florida Statutes, is
11 amended to read:

12 768.21 Damages.--All potential beneficiaries of a
13 recovery for wrongful death, including the decedent's estate,
14 shall be identified in the complaint, and their relationships
15 to the decedent shall be alleged. Damages may be awarded as
16 follows:

17 (1) Each survivor may recover the value of lost
18 support and services from the date of the decedent's injury to
19 her or his death, with interest, and future loss of support
20 and services from the date of death and reduced to present
21 value. In evaluating loss of support and services, the
22 survivor's relationship to the decedent, the amount of the
23 decedent's probable net income available for distribution to
24 the particular survivor, and the replacement value of the
25 decedent's services to the survivor may be considered. In
26 computing the duration of future losses, the joint life
27 expectancies of the survivor and the decedent and the period
28 of minority, in the case of healthy minor children, may be
29 considered.

30
31

1 (2) The surviving spouse may also recover for loss of
2 the decedent's companionship and protection and for mental
3 pain and suffering from the date of injury.

4 (3) Minor children of the decedent, and all children
5 of the decedent if there is no surviving spouse, may also
6 recover for lost parental companionship, instruction, and
7 guidance and for mental pain and suffering from the date of
8 injury.

9 (4) Each parent of a deceased minor child may also
10 recover for mental pain and suffering from the date of injury.
11 Each parent of an adult child may also recover for mental pain
12 and suffering if there are no other survivors.

13 (5) Medical or funeral expenses due to the decedent's
14 injury or death may be recovered by a survivor who has paid
15 them.

16 (6) The decedent's personal representative may recover
17 for the decedent's estate the following:

18 (a) Loss of earnings of the deceased from the date of
19 injury to the date of death, less lost support of survivors
20 excluding contributions in kind, with interest. Loss of the
21 prospective net accumulations of an estate, which might
22 reasonably have been expected but for the wrongful death,
23 reduced to present money value, may also be recovered:

24 1. If the decedent's survivors include a surviving
25 spouse or lineal descendants; or

26 2. If the decedent is not a minor child as defined in
27 s. 768.18(2), there are no lost support and services
28 recoverable under subsection (1), and there is a surviving
29 parent.

30 (b) Medical or funeral expenses due to the decedent's
31 injury or death that have become a charge against her or his

1 estate or that were paid by or on behalf of decedent,
2 excluding amounts recoverable under subsection (5).
3 (c) Evidence of remarriage of the decedent's spouse is
4 admissible.
5 (7) All awards for the decedent's estate are subject
6 to the claims of creditors who have complied with the
7 requirements of probate law concerning claims.
8 ~~(8) The damages specified in subsection (3) shall not~~
9 ~~be recoverable by adult children and the damages specified in~~
10 ~~subsection (4) shall not be recoverable by parents of an adult~~
11 ~~child with respect to claims for medical malpractice as~~
12 ~~defined by s. 766.106(1).~~

13 Section 2. This act shall take effect July 1, 2001.

14 *****

15 HOUSE SUMMARY

16 Deletes a provision of law precluding recovery for pain
17 and suffering for wrongful death caused by medical
18 malpractice with respect to certain persons. See bill for
19 details.

20
21
22
23
24
25
26
27
28
29
30
31