

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2144

SPONSOR: Senator Campbell

SUBJECT: Wrongful Death/Surviving Spouse

DATE: March 9, 2002

REVISED: 03/12/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida Wrongful Death Act provides, in part, that the minor children of the deceased, and all children of the deceased if there is no surviving spouse, may recover damages for the wrongful death of a parent. If both parents die in the same incident, however, recovery is only available for the wrongful death of the person who dies later.

This bill amends s. 768.21(3), F.S., of the wrongful death act to permit recovery of damages for lost parental companionship, instruction and guidance, and mental pain and suffering arising from the wrongful death of both parents when they die within 30 days of each other or die as a result of the same wrongful act or series of acts arising from the same incident. This bill is limited only to the wrongful death statute so it does not apply in other situations where the time of a spouse's death might be relevant.

The bill has an effective date of July 1, 2002.

This bill substantially amends s. 768.21 of the Florida Statutes.

II. Present Situation:

Section 768.21, F.S., sets forth the statutory provisions by which damages may be awarded in a wrongful death action. For example, each survivor may recover the value of lost support and services from the date of the decedent's injury to her or his death and future loss of support and services from the date of death. *See* s. 768.21(1), F.S. The surviving spouse may also recover for loss of the decedent's companionship and for mental pain and suffering from the date of injury. *See* s. 768.21(2), F.S. Each parent of a deceased minor child may also recover for mental pain

and suffering from the date of injury and each parent of an adult child may also recover for mental pain and suffering if there are no other survivors. *See* s. 768.21(4), F.S.

Section 768.21(3), F.S., governs children's' recovery in wrongful death actions for the death of their parents. The statute provides:

Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain and suffering from the date of injury.¹

In *King v. Font Corporation*, 612 So. 2d 662 (Fla. 2d DCA 1993), the Second District Court of Appeal discussed and applied s. 768.21(3), F.S. Waldo and Cecil Mae Schindler were involved in a automobile accident caused by another's negligence. *See King*, 612 So. 2d at 663. Mr. Schindler was killed at the scene; Mrs. Schindler died approximately ten minutes later en route to the hospital. *See Id.* King, the Schindler's personal representative, filed a wrongful death action requesting damages for loss of parental companionship on behalf of the Schindlers' three adult children. *See Id.*

The trial court dismissed the claim in the father's action because Waldo Schindler was survived by Cecil Mae Schindler, although by only ten minutes. *See Id.* The Second District Court of Appeal affirmed the dismissal. *See Id.* at 664. The court explained:

First, it seems clear that the definition of "survivors" in section 768.18, Florida Statutes (Supp. 1990), determines survivorship at the moment of wrongful death. That definition refers to the "decedent's spouse" and to relatives "dependent" on the decedent. Although the period was brief, Mrs. Schindler was the decedent's spouse for some legal purposes.

Id. at 663.

Since Mrs. Schindler survived Mr. Schindler by ten minutes, the court held that the children could not recover for Mr. Schindler's wrongful death.

In a concurring opinion in *Snyder v. Alamo Rental Car, Inc.*, 790 So. 2d 1262, 1262-1263 (Fla. 5th DCA 2001), Judge Sharp commented:

This case illustrates the inequities of the statutory scheme, even more clearly than *King*. In *King*, the father of adult children died ten minutes before the mother, in an automobile collision. The children were permitted to bring a wrongful death suit including pain and suffering for the mother's death against the tortfeasor, but not their father's. In this case, the adult children belonged to a "blended" family. Some were the children of the husband-father, and some were the children of the wife-mother. The wife died at the scene of a fatal automobile collision with another car, and the husband died four hours later, in a hospital, as a result of his injuries received in the collision. Thus, in this case under the wording of section 768.21(3), the adult children of the husband-father were

¹ Prior to the enactment of ch. 90-14, L.O.F., s. 768.21(3), F.S., only minor children could recover damages under s. 768.21(3), F.S., for their pain and suffering upon the wrongful death of a parent.

permitted to sue under the statute for pain and suffering for their father's death, but the adult children of the wife-mother were denied any remedy for their mother's death, as well as for their step-father's death.

The rationale for such disparate treatment is not clear to me, particularly in view of the statute's declared public purpose "to shift the losses resulting when wrongful death occurs from the survivors of the decedent to the wrongdoer." § 768.17, Fla. Stat. It is clear that the Legislature wished to limit recovery for pain and suffering type damages to only one recovery when there are both adult children and a surviving spouse. But in cases like *King* and this one, the surviving spouse has no possibility of pursuing this remedy, and the only persons who could do so are the adult children.

Judge Sharp suggested that the issue "should be revisited at some point by the Legislature." *Snyder*, 790 So. 2d at 1263 (Sharp, J., specially concurring).

III. Effect of Proposed Changes:

This bill amends s. 768.21(3), F.S., to provide that if both spouses die within 30 days of each other or die as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have predeceased the other. This would have the effect of allowing recovery in the situations described in *King* and *Snyder*.

However, the bill arguably could apply in a broader context than contemplated in the *King* and *Snyder* cases. The bill could be interpreted as applying to deaths occurring within 30 days of one another even if the deaths result from separate, unrelated wrongful acts. Additionally, the phrase "...if both spouses die as a result of the same wrongful act or series of acts arising out of the same incident.." could be construed to cover the scenario where one spouse actually died months or even years after the other spouse. Both of these interpretations could be problematic as the first scenario could result in two different tortfeasors being responsible for two different sets of damages that each did not cause, while the second scenario could create havoc in the application of the recovery of damages where the second spouse dies more than two years after the first spouse (wrongful death actions must be filed no later than 2 years after the decedent's death.)

This bill is limited only to the wrongful death statute so it does not apply in other situations where the time of a spouse's death might be relevant.

This bill takes effect July 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The precise impact is indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Revises the bill so that spouses are deemed to have predeceased each other when they die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident.