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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-44, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
FINAL ANALYSIS**

BILL #: CS/HB 795, 1ST ENGROSSED
RELATING TO: Wrongful Death/Surviving Spouse
SPONSOR(S): Council for Smarter Government, Representatives Seiler and others
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT YEAS 11 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 8 NAYS 2
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The 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 later to die.

This act amends the wrongful death statute to permit recovery for 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 acts. This act is limited only to the wrongful death statute, thus it does not apply in other situations where the time of a spouse's death might be relevant.

This act does not appear to have a fiscal impact on state or local governments.

CS/HB 795, 1st Eng., passed the House on March 19, 2002, and the Senate on March 20, 2002. It became law on April 16, 2002, as Chapter 2002-44, Laws of Florida.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Section 768.21, F.S., sets forth the statutory provisions by which damages may be awarded in a wrongful death action. A 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.¹ 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.² 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.

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:

¹ Section 768.21(8), F.S., limits recovery due to wrongful death in medical malpractice actions. Adult children cannot recover for lost parental companionship or mental pain and suffering for the wrongful death of their parents due to medical malpractice. Parents of an adult child cannot recover mental pain and suffering due to the death of their child due to medical malpractice.

² For the limited purposes of the wrongful death statute, section 768.18(2), F.S., defines "minor children" as children under age 25.

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, of the Fifth District Court of Appeal, 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 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).

C. EFFECT OF PROPOSED CHANGES:

This act amends s. 768.21(3), F.S., to provide that if both spouses die with 30 days of each other or die as a result of the same wrongful act or acts, each spouse shall be deemed to have been predeceased by the other. This would have the effect of allowing recovery in the situations described in King and Snyder. This act 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 act took effect upon becoming law on April 16, 2002, and applies to any cause of action accruing on or after that date.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This act does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This act does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The act does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On January 30, 2002, the Committee on Judicial Oversight adopted one amendment specifying the act applies to causes of action accruing on or after the act becomes law. The bill was then reported favorably, as amended.

On February 7, 2002, the Council for Smarter Government reported the bill favorably as a council substitute.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

L. Michael Billmeier, Jr., J.D.

Staff Director:

Nathan L. Bond, J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

L. Michael Billmeier, Jr.

Staff Director:

Don Rubottom

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

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Staff Director:

Nathan L. Bond, J.D.