

By Senator Yarborough

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1 A bill to be entitled
2 An act relating to medical negligence; amending s.
3 768.21, F.S.; specifying which medical expenses
4 resulting from medical negligence may be recovered by
5 a personal representative or canceled by a court;
6 expanding the class of survivors who may recover
7 noneconomic damages due to a wrongful death caused by
8 medical negligence; providing that such recoveries are
9 contingent upon certain findings or determinations by
10 the Agency for Health Care Administration or the
11 Department of Health; providing applicability; making
12 technical changes; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Subsections (6) and (8) of section 768.21,
17 Florida Statutes, are amended to read:

18 768.21 Damages.—All potential beneficiaries of a recovery
19 for wrongful death, including the decedent's estate, shall be
20 identified in the complaint, and their relationships to the
21 decedent shall be alleged. Damages may be awarded as follows:

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

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

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

32 2. If the decedent is not a minor child as defined in s.
33 768.18(2), there are no lost support and services recoverable
34 under subsection (1), and there is a surviving parent.

35 (b) Medical or funeral expenses due to the decedent's
36 injury or death which ~~that~~ have become a charge against her or
37 his estate or have been ~~that were~~ paid by or on behalf of
38 decedent, excluding amounts recoverable under subsection (5).
39 The medical expenses described in this paragraph include amounts
40 paid by the decedent or the decedent's estate for the course of
41 negligent medical care or treatment that caused the decedent's
42 death and for any medical care or treatment resulting from the
43 negligent medical care. Any outstanding charges submitted to the
44 decedent or the decedent's estate by a health care practitioner
45 or health care facility found to have committed medical
46 negligence that caused the decedent's death must be canceled by
47 the court. Such charges include any charges for the course of
48 negligent medical care or treatment and any charges by the
49 practitioner or facility for care or treatment resulting from
50 the negligence.

51
52 Evidence of remarriage of the decedent's spouse is admissible.

53 (8) The decedent's personal representative may initiate a
54 medical negligence action to recover the damages described in
55 subsection (3) for the adult children of the decedent or the
56 damages described in subsection (4) for each parent of the
57 decedent only as provided in this subsection.

58 (a)1. A medical negligence action to recover the damages

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59 described in subsection (3) or subsection (4) may be initiated
60 against a health care practitioner who, at the time of the
61 decedent's medical care or treatment, was licensed by the
62 Department of Health if a probable cause panel or the department
63 finds probable cause as described in s. 456.073(4) to believe
64 that such practitioner committed a violation of law or rule
65 relating to his or her profession which constituted a breach of
66 the prevailing professional standard of care and caused the
67 decedent's death. If such an action is authorized against a
68 health care practitioner under this subsection, a claim for
69 medical negligence to recover the damages described in
70 subsection (3) or subsection (4) may also be brought against any
71 health care facility that is vicariously liable for the health
72 care practitioner's negligence.

73 2. A medical negligence action to recover the damages
74 described in subsection (3) or subsection (4) may be initiated
75 against a health care facility that, at the time of the
76 decedent's treatment or care, was licensed by the Agency for
77 Health Care Administration or the department and against any
78 person who is vicariously liable for the health care facility's
79 negligence if:

80 a. The agency or the department finds that the health care
81 facility committed a violation of a law or rule which
82 constitutes a breach of the prevailing professional standard of
83 care and caused the decedent's death; or

84 b. The department finds probable cause to believe that a
85 practitioner violated a law or rule relating to his or her
86 profession which constituted a breach of the prevailing
87 professional standard of care and caused the decedent's death

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88 and the facility is vicariously liable for the practitioner's
89 negligence.

90 (b) The presuit procedures required to be followed under
91 chapter 766, including those relating to presuit investigations,
92 notice, and discovery, do not apply to a medical negligence
93 action authorized by this subsection.

94 (c) If the personal representative of the decedent files a
95 legally sufficient complaint alleging medical negligence by a
96 health care practitioner or health care facility within 180 days
97 after the decedent's death with the Agency for Health Care
98 Administration or the Department of Health and there has not
99 been a dismissal or final resolution of the complaint within 9
100 months after submission of the complaint, the determination of
101 probable cause is deemed to have been made.

102 (d) A finding of probable cause by a probable cause panel
103 or the department is not admissible in a medical negligence
104 action authorized under this subsection ~~The damages specified in~~
105 ~~subsection (3) shall not be recoverable by adult children and~~
106 ~~the damages specified in subsection (4) shall not be recoverable~~
107 ~~by parents of an adult child with respect to claims for medical~~
108 ~~negligence as defined by s. 766.106(1).~~

109 Section 2. This act shall take effect July 1, 2024.