

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [CS/HB 1517](#)

TITLE: Civil Liability for the Wrongful Death of an Unborn Child

SPONSOR(S): Greco

COMPANION BILL: [SB 1284](#) (Grall)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Civil Justice & Claims](#)

13 Y, 3 N, As CS



[Judiciary](#)

SUMMARY

Effect of the Bill:

CS/HB 1517 expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover monetary damages from a person who is responsible for the unborn child's death. However, the bill clarifies that such wrongful death action may not be brought against the mother for the wrongful death of her own unborn child or against a medical provider for lawful medical care.

Additionally, the bill prohibits a decedent's estate from recovering certain damages when the decedent is an unborn child.

Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact on state and local governments, private entities, and private individuals.

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ANALYSIS

EFFECT OF THE BILL:

CS/HB 1517 expands [Florida's Wrongful Death Act](#) (Act) to allow parents of an unborn child to recover [civil damages for such unborn child's death](#) in the same way that other survivors may generally recover under the Act. The bill accomplishes this by amending the definition of "survivors" to include parents of an unborn child and by specifically providing that parents of an unborn child may recover for their mental pain and suffering from the date of injury. Under the bill, the parents in such a wrongful death suit could potentially recover damages allowed by the Act, including the value of future loss of support and services, reduced to present value; mental pain and suffering; and already-paid medical or funeral expenses. (Sections [1](#) and [3](#))

However, the bill also clarifies that the wrongful death action created by the bill may not be brought against:

- The mother of the unborn child; or
- A medical provider for lawful medical care provided in compliance with the applicable standard of care, including, but not limited to, care related to assisted reproductive technologies provided with the consent of the mother. (Section [2](#))

Under the bill, "unborn child" means a member of the species *Homo sapiens*, at any stage of development, who is carried in the womb. (Section [1](#))

The bill prohibits a decedent's estate from recovering the value the estate could reasonably have acquired had the decedent lived, if the decedent is an unborn child. (Section [3](#))

The bill provides an effective date of July 1, 2025. (Section [4](#))

STORAGE NAME: h1517a.CIV

DATE: 3/20/2025

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on state government due to the expansion of Florida's Wrongful Death Act, which may result in an increased number of medical malpractice lawsuits.

LOCAL GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on local government due to the expansion of Florida's Wrongful Death Act, which may result in an increased number of medical malpractice lawsuits.

PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact as it expands Florida's Wrongful Death Act, which may allow for parents of an unborn child to recover monetary damages from state and local government entities and private individuals party to the suit.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

[Florida's Wrongful Death Act](#)

"An action for wrongful death is a purely statutory right" that was not available at common law.¹ Under Florida's Wrongful Death Act (Act),² when a person's death is caused by a wrongful act, negligence, default, or breach of contract or warranty of any person, and the event would have entitled the decedent to recover damages if he or she had survived, the person who would have been liable if death had not occurred is still liable for specified damages, notwithstanding the injured person's death.³

A wrongful death action must be brought by the decedent's personal representative, who may recover specified damages for the benefit of the decedent's estate and his or her survivors as specified by the Act. A decedent's "survivors" include:

- The surviving spouse of the decedent;
- Children of the decedent, who are under 25 years of age;
- Children of the decedent, who are 25 years of age or older, if there is no surviving spouse;
- Parents of a deceased child who was under 25 years of age at the time of death;
- Parents of a deceased child who was 25 years of age or older at the time of death and who had no other survivors; and
- Other blood relatives and adoptive brothers and sisters, if such relative or sibling was partly or wholly dependent on the decedent for support⁴ or services.^{5,6}

A "survivor" under the Act may generally recover for:

- The value of lost support and services from the date of the decedent's injury to his or her death; and
- Loss of future support and services from the date of death, reduced to present value.⁷

¹ *Toombs v. Alamo Rent-A-Car, Inc.*, 833 So. 2d 109, 111 (Fla. 2002).

² Ss. [768.16](#) - [.26, F.S.](#)

³ S. [768.19, F.S.](#)

⁴ "Support" includes non-monetary and monetary contributions. S. [768.18\(3\), F.S.](#)

⁵ "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and are determined under the particular facts of each case. S. [768.18\(4\), F.S.](#)

⁶ Ss. [768.18](#), [768.20](#), and [768.21, F.S.](#)

⁷ S. [768.21\(1\), F.S.](#)

Further, specified survivors may generally recover for additional economic and noneconomic damages,⁸ including:

- Loss of companionship and protection if sought by the surviving spouse;⁹
- Loss of companionship, instruction, and guidance if sought by:
 - A child of the decedent which child is under 25 years of age;
 - A child of the decedent which child is 25 years of age or older, if there is no surviving spouse;¹⁰
- Mental pain and suffering of the survivor, if the survivor seeking damages is:
 - A surviving spouse;¹¹
 - A child of the decedent which child is under 25 years of age;
 - A child of the decedent which child is 25 years of age or older, if there is no surviving spouse;¹²
 - A parent of a deceased child who was under 25 years of age at the time of death;
 - A parent of a deceased child who was 25 years of age or older at the time of death and who had no other survivors;¹³ and
- Medical and funeral expenses due to the decedent's injury or death if sought by the survivor who paid such expenses.¹⁴

Additionally, under the Act, the decedent's estate may generally recover for:

- Loss of earnings of the decedent from the date of injury to the date of death;
- Medical and funeral expenses due to the decedent's injury or death that were paid by the estate or have become a debt against the estate.¹⁵

The decedent's estate may also recover the value the estate could reasonably have acquired had the decedent lived, reduced to present value, if the:

- Decedent's survivors include a surviving spouse or lineal descendants; or
- Decedent is not a minor child,¹⁶ there are no lost support and services recoverable, and there is a surviving parent.¹⁷

However, the Act prohibits the recovery of noneconomic wrongful death damages in medical negligence cases by the decedent's children who are 25 years of age or older and parents of a deceased child who was 25 years of age or older at the time of death.¹⁸

Civil Remedies for the Death of an Unborn Child

In 1978, in *Duncan v. Flynn*, the Florida Supreme Court held that an unborn viable fetus is not a "person" as that term is used in the Act.¹⁹ The Court, adopting portions of the holding of the Second District Court of Appeal of Florida as its own, held that "to constitute 'live birth' so as to give rise to an action for wrongful death, a child must acquire a separate and independent existence of its mother."²⁰ Accordingly, the father in *Duncan* was precluded from bringing a suit for the wrongful death of his baby who died during delivery.²¹

⁸ ["Noneconomic damages"](#) are nonfinancial losses that would not have occurred but for the death giving rise to the cause of action, including loss of companionship, protection, instruction, or guidance and mental pain and suffering. See s. [766.202\(8\), F.S.](#)

⁹ S. [768.21\(2\), F.S.](#)

¹⁰ S. [768.21\(3\), F.S.](#)

¹¹ S. [768.21\(2\), F.S.](#)

¹² S. [768.21\(3\), F.S.](#)

¹³ S. [768.21\(4\), F.S.](#)

¹⁴ S. [768.21\(5\), F.S.](#)

¹⁵ S. [768.21\(6\), F.S.](#)

¹⁶ Under the Act, "minor child" means a child under 25 years of age, notwithstanding the age of majority. S. [768.18\(2\), F.S.](#)

¹⁷ *Id.*

¹⁸ S. [768.21\(8\), F.S.](#)

¹⁹ *Duncan v. Flynn*, 358 So. 2d 178, 178 (Fla. 1978).

²⁰ *Duncan v. Flynn*, 342 So. 2d 123, 126 (Fla. 2d DCA 1977). The Court held that "generally, the requirements of separate and independent existence will be met by a showing of expulsion (or in a Caesarean section by complete removal) of the child's body from its mother with evidence that the cord has been cut and the infant has an independent circulation of blood."

²¹ *Id.* at 127.

In building upon the ruling in *Duncan v. Flynn*, the Fifth District Court of Appeal of Florida, in *Singleton v. Ranz*, held that since an unborn fetus is not considered a person for purposes of the Act, an unborn fetus then is “living tissue of the body of the mother” and negligent or intentional tortious injury brought upon an unborn fetus provides the mother with a legal cause of action in the same manner as if she suffered a wrongful injury to any other part of her body.²²

Subsequently, in 1997, in *Tanner v. Hartog*, the Florida Supreme Court reiterated that “there is no cause of action under Florida’s Wrongful Death Act for the death of a stillborn fetus.”²³ However, in that same case, the Court recognized a common law action for “negligent stillbirth.”²⁴ The Court made clear that an action for negligent still birth is distinct from an action under the Act noting that:

A suit for negligent stillbirth is a direct common law action by the parents which is different in kind from a wrongful death action. The former is directed toward the death of a fetus while the latter is applicable to the death of a living person. As contrasted to the damages recoverable by parents under the wrongful death statute, the damages recoverable in an action for negligent stillbirth would be limited to mental pain and anguish and medical expenses incurred incident to the pregnancy.²⁵

Consequently, although Florida allows a limited recovery of damages for negligent stillbirth, it does not currently recognize a cause of action for wrongful death based on the death of an unborn child.

Other States

Florida remains one of six states, including California, Iowa, Maine, New Jersey, and New York, that do not currently recognize a cause of action for the wrongful death of an unborn child.²⁶ Alternatively, forty-three states do currently allow for a cause of action for the wrongful death of an unborn child, depending on the viability²⁷ of the child in question.²⁸

Sixteen states afford a cause of action for the wrongful death of an unborn child at any stage of development.²⁹ Several of these states, however, do not allow for suit to be brought against the mother for the wrongful death of her unborn child.³⁰

Three states, including Connecticut,³¹ Georgia,³² and Mississippi,³³ permit a wrongful death action to be brought on behalf of an unborn child if the quickening standard is met, which requires fetal movement to have been detected prior to death.³⁴

²² *Singleton v. Ranz*, 534 So. 2d 847, 848 (Fla. 5th DCA 1988).

²³ *Tanner v. Hartog*, 696 So. 2d 705, 706 (Fla. 1997).

²⁴ The Court held that the impact rule does not apply to cases of negligent stillbirth. The impact rule generally requires that before a plaintiff can recover damages for emotional distress caused by the negligence of another, the emotional stress suffered must flow from physical injuries the plaintiff suffered in *an impact*. *Id.* at 707.

²⁵ *Tanner*, 696 So. 2d at 708-09.

²⁶ *Rosales v. Northeast Community Clinic*, No. B276465, 2018 WL 1633068, at *2 (Cal. Ct. App. Apr. 5, 2018); *Stern v. Miller*, 348 So. 2d 303, 307–308 (Fla. 1977); *Dunn v. Rose Way, Inc.*, 333 N.W. 2d 830, 831 (Iowa 1983); *Shaw v. Jendzejec*, 717 A.2d 367, 371 (Me. 1998); *Giardina v. Bennett*, 111 N.J. 412, 421–425 (N.J. 1988); *Endresz v. Friedberg*, 24 N.Y. 2d 478, 484 (N.Y. 1969).

²⁷ “Viability” is the ability of a developing fetus to survive independent of a pregnant woman’s womb. Elizabeth Chloe Romanis, *Is “viability” viable? Abortion, conceptual confusion and the law in England and Wales and the United States*, *Journal of Law and the Biosciences*, Vol. 7, Issue 1, Jan.-June 2020.

²⁸ Only Wyoming remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.

²⁹ Alabama (*LePage v. Ctr. for Reprod. Med., P.C.*, No. SC-2022-0515, 2024 WL 656591, at *1 (Ala. Feb. 16, 2024)); Alaska (Alaska Stat. Ann. § 09.55.585); Arkansas (Ark. Code Ann. § 16-62-102); Illinois (740 Ill. Comp. Stat. Ann. 180/2.2); Kansas (Kan. Stat. Ann. § 60-1901); Louisiana (Louisiana Civil Code Art. 26); Michigan (Mich. Comp. Laws Ann. § 600.2922a); Missouri (Mo. Ann. Stat. § 1.205); Nebraska (Neb. Rev. Stat. § 30-809); Oklahoma (12 Okl. St. Ann. § 1053, OK ST T. 12 § 1053; *Pino v. United States*, 2008 OK 26, 183 P.3d 1001); South Dakota (S.D. Codified Laws §21-5-1); Tennessee (Tenn. Code Ann. § 20-5-106(c)); Texas (Tex. Civ. Prac. & Rem. Code § 71.002); Utah (*Carranza v. United States*, 2011 UT 80, 267 P.3d 912); Virginia (Va. Code. Ann. §§8.01-50); West Virginia (*Farley v. Sarti*, 195 W. Va. 671, 681 (1995)).

³⁰ See Kan. Stat. Ann. § 60-1901; Tex. Civ. Prac. & Rem. Code § 71.003; Va. Code. Ann. §§8.01-50.

³¹ *Elderkin v. Mahoney*, No. No. CV156056191, 2017 WL 5178583 (Conn. Super. Ct. Sept. 28, 2017).

³² *Porter v. Lassiter*, 91 Ga. App. 712 (1955); *Shirley v. Bacon*, 154 Ga. App. 203 (1980).

³³ Miss. Code Ann. § 11-7-13 (2018).

³⁴ Romanis, *supra*, note 26.

Twenty-four states permit a cause of action for the wrongful death of an unborn child under a viability standard, which examines whether an unborn child can exist independently outside of the mother’s womb.³⁵ Of these 24 states, one state, Indiana, explicitly prohibits a wrongful death action where the death of an unborn child is the result of a lawful abortion.³⁶

Finally, one state, Wyoming, remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.³⁷

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	13 Y, 3 N, As CS	3/20/2025	Jones	Leshko
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> Prohibited a decedent’s estate from recovering the value the estate could reasonably have acquired had the decedent lived, if the decedent is an unborn child. 			
Judiciary Committee				

THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.

³⁵ Arizona (*Summerfield v. Superior Ct. in and for Maricopa County*, 144 Ariz. 467 (Ariz. 1985)); Colorado (*Gonzales v. Mascarenas*, 190 P. 3d 826 (Colo. App. 2008)); Delaware (*Worgan v. Greggo & Ferrera, Inc.*, 50 Del. 258 (Del. Super. Ct. 1956)); Hawaii (*Hawaii Castro v. Melchor*, 137 Hawai’i 179 (Haw. Ct. App. 2016)); Idaho (*Volk v. Baldazo*, 103 Idaho 570 (Idaho 1982)); Indiana (Ind. Code Ann. §34-23-2-1(b)); Kentucky (*Stevens v. Flynn*, No. 2010-CA-00196-MR, 2011 WL 3207952 (Ky. Ct. App. July 29, 2011)); Maryland (*Brown v. Contemporary OB/GYN Assocs.*, 143 Md. App. 199 (Md. Ct. Spec. App. 2002); Md. Code Ann., Cts. & Jud. Proc. §§ 3-902, 3-904); Massachusetts (*Thibert v. Milka*, 419 Mass. 693 (Mass. 1995)); Minnesota (*Pehrson v. Kistner*, 301 Minn. 299 (Minn. 1974)); Montana (*Blackburn v. Blue Mt. Women’s Clinic*, 286 Mont. 60 (Mont.1997)); Nevada (*White v. Yup*, 85 Nev. 527 (Nev. 1969)); New Hampshire (*Wallace v. Wallace*, 120 N.H. 675 (N.H. 1980)); New Mexico (*Miller v. Kirk*, 120 N.M. 654 (N.M. 1995)); North Carolina (*DiDonato v. Wortman*, 320 N.C. 423, 358 S.E.2d 489 (1987)); North Dakota (*Hopkins v. McBane*, 359 N.W. 2d 862 (N.D. 1984)); Ohio (*Griffiths v. Doctor’s Hosp.*, 150 Ohio App. 3d 234, 2002-Ohio-6173, 780 N.E.2d 603 (2002)); Oregon (*LaDu v. Oregon Clinic, P.C.*, 165 Or. App. 687 (Or. Ct. App. 2000)); Pennsylvania (*Coveleski v. Bubnis*, 535 Pa.166 (Pa. 1993)); Rhode Island (*Miccolis v. AMICA*, 587 A. 2d 67 (R.I. 1991)); South Carolina (*Crosby v. Glasscock Trucking*, 340 S.C. 626 (S.C. 2000)); Vermont (*Vaillancourt v. Med. Ctr. Hosp. Vt., Inc.*, 139 Vt. 38 (Vt. 1980)); Washington (*Baum v. Burrington*, 119 Wash. App.36 (Wash. Ct. App. 2003)); Wisconsin (*Kwaterski v. State Farm Mut. Auto. Ins. Co.*, 34 Wis. 2d 14 (Wis. 1967)).

³⁶ Ind. Code Ann. §34-23-2-1.

³⁷ Wyoming has not determined whether an unborn child is a “person” under the state’s Wrongful Death Act. But, the Wyoming Supreme Court has held that an unborn child is not a “minor” for whom guardianship statutes authorize the appointment of a guardian. *Matter of Guardianship of MKH*, 2016 WY 103, 382 P.3d 1096 (Wyo. 2016).