

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 734

INTRODUCER: Senator Yarborough and others

SUBJECT: Actions for Recovery of Damages for Wrongful Death

DATE: March 25, 2025

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Gerbrandt</u>	<u>McKnight</u>	<u>AHS</u>	<b>Favorable</b>
3.	<u>Bond</u>	<u>Yeatman</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 734 expands the application of the Florida Wrongful Death Act by repealing exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from recovering noneconomic damages.

The bill may have an indeterminate negative fiscal impact on state and local governments. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2025.

## II. Present Situation:

### History of Wrongful Death Actions

Most of the state's tort law is derived from the common law. At common law, there was no right to recover for the negligent wrongful death of another person.<sup>1</sup> Over time, however, the Legislature authorized recoveries for wrongful death and expanded the types of damages recoverable and the classes of survivors entitled to recover. "Because wrongful death actions did not exist at common law, all claims for wrongful death are created and limited by Florida's Wrongful Death Act."<sup>2</sup>

The early versions of the state's wrongful death laws limited the right to recover damages to a surviving spouse, to surviving children if there was no surviving spouse, and to those dependent upon the decedent for support if there was no one belonging to the prior two classes, and finally to the executor of the decedent's estate if there was no one belonging from the prior three

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<sup>1</sup> *Louisville & Nashville Railroad Co. v. Jones*, 45 Fla. 407, 416 (Fla. 1903).

<sup>2</sup> *Chinghina v. Racik*, 647 So. 2d 289, 290 (Fla. 4<sup>th</sup> DCA 1994).

classes.<sup>3</sup> To show dependence on the decedent, a claimant had to show that he or she was a minor, physically or mentally disabled, or elderly.<sup>4</sup> Adults who were mentally and physically capable of providing for themselves could not recover damages despite having been supported by the decedent.<sup>5</sup> Any damages recoverable were limited to a form of economic damages.

The wrongful death law was substantially re-written in 1972.<sup>6</sup> That law created the Florida Wrongful Death Act, which provides the framework for current law. One of the major changes made by this law was to consolidate or merge survival and wrongful death actions.<sup>7</sup> A survival action is a legal action allowed under the survival statute to continue notwithstanding the plaintiff's death. As merged, the 1972 law allowed the statutory survivors to recover damages for their pain and suffering as a substitute for recoveries for the decedent's pain and suffering under the survival statute.<sup>8</sup>

The type of damages that a survivor is entitled to under the 1972 law depends upon the classification of the survivor. The 1972 law allows all survivors to recover the value of lost support and services, a type of economic damages. A surviving spouse may also recover loss of marital companionship and pain and suffering, types of noneconomic damages. Minor children, then defined as under age 21<sup>9</sup> and unmarried, may also recover damages for loss of parental companionship and for their pain and suffering. The parents of a deceased minor child may also recover damage for their pain and suffering. Any survivor who pays the decedent's final medical, funeral, and burial expenses may recover those costs. The estate of the decedent may recover lost earnings from date of injury to date of death, plus net accumulations, which is essentially an estimate of the present value of the future estate that would have been available for inheritance.

A 1981 act expanded the definition of "minor children" to include all children of the decedent under age 25, regardless of whether any child is married or dependent.<sup>10</sup> The statutes did not authorize a wrongful death action by a nondependent, adult child for the loss of a parent or an action by a parent for the loss of an adult child.<sup>11</sup>

In 1990, the Legislature generally expanded the class of survivors entitled to recover damages for pain and suffering for a wrongful death.<sup>12</sup> As expanded, a decedent's adult children may recover damages for pain and suffering if there is no surviving spouse. The parents of an adult

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<sup>3</sup> *Duval v. Hunt*, 34 Fla. 85 (Fla. 1894) (discussing a wrongful death statute enacted in 1883).

<sup>4</sup> *Id.* at 101-102.

<sup>5</sup> The Court interpreted the dependency requirement in the statute as requiring a person to have a genuine inability to support himself or herself based on the view that strong, healthy adults who are capable of earning a livelihood should not be content to "live in idleness upon the fruits of [another's] labor." *Id.* at 101.

<sup>6</sup> Chapter 72-35, Laws of Fla.

<sup>7</sup> *Sheffield v. R.J. Reynolds Tobacco Co.*, 329 So. 3d 114, 121 (Fla. 2021).

<sup>8</sup> *Martin v. United Sec. Services, Inc.*, 314 So. 2d 765, 767 (Fla. 1975).

<sup>9</sup> Florida changed the age of majority from 21 to 18 in the following year, but that act did not change the reference to age 21 in the wrongful death law. Section 743.07, F.S.; chapter 73-21, Laws of Fla.

<sup>10</sup> Chapter 81-183, Laws of Fla.

<sup>11</sup> *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

<sup>12</sup> Chapter 90-14, Laws of Fla.

decedent may also recover damages for pain and suffering if there is no surviving spouse or surviving minor or adult children.<sup>13</sup>

However, the same law that expanded the class entitled to recover damages for pain and suffering for a wrongful death precluded the additional class members from recovering those damages for a wrongful death based on medical malpractice.<sup>14</sup> Thus, a narrower group of survivors may recover damages for pain and suffering for a wrongful death that is caused by medical malpractice, and a broader group may recover damages for pain and suffering for a death that is caused by all other forms of negligence.

In a 2000 opinion, the Florida Supreme Court found the medical negligence exception constitutional.<sup>15</sup> The Court found that the exception was rationally related to the need to control the costs of health care and medical malpractice insurance due to a medical malpractice insurance crisis. However, Justice Pariente, in her dissenting opinion, argued that the exception should be found to be unconstitutional because of her belief that the medical malpractice insurance crisis, which initially justified the exception, no longer existed.<sup>16</sup> The Florida Supreme Court later found that the malpractice crisis was over,<sup>17</sup> but that finding did not overrule the ruling that the medical negligence exceptions are constitutional.<sup>18</sup>

### **Current Effect of the Medical Negligence Exceptions to the Wrongful Death Law**

Currently, neither an adult child (25+) of an unmarried person who dies due to medical negligence, nor the parents of an adult child (25+) who dies due to medical negligence, may recover noneconomic damages (commonly referred to as “pain and suffering damages”). They may, however, recover through the estate economic damages such as net accumulations, final medical bills, and funeral and burial expenses. Plaintiff’s attorneys report that these other damages are often insufficient to warrant the cost and time required to prosecute a medical negligence case.<sup>19</sup>

### **Medical Negligence Actions**

#### ***Procedures for a Medical Negligence Action***

Medical negligence claims are subject to statutory presuit screening and investigation requirements.<sup>20</sup> A claimant may, and typically does, request the relevant medical records, which must be furnished by the medical providers at a reasonable charge.<sup>21</sup> The claimant must then

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<sup>13</sup> Chapter 90-14, Laws of Fla. (amending s. 768.18(3) and (4), F.S.). The adult children were also authorized by the 1990 law to recover noneconomic damages for lost parental companionship, instruction, and guidance.

<sup>14</sup> *Id.* (amending s. 768.18(8), F.S.).

<sup>15</sup> *Mizrahi v. North Miami Medical Center, Ltd.*, 761 So. 2d 1040, 1042 (Fla. 2000).

<sup>16</sup> *Id.*

<sup>17</sup> *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014). *North Broward Hospital District v. Kalitan*, 219 So. 3d 49 (Fla. 2017).

<sup>18</sup> *Santiago v. Rodriguez*, 281 So. 3d 603 (Fla. 2nd DCA 2019), *rev. dismissed*, 2020 WL 927717 (Fla. 2020).

<sup>19</sup> Fasig Brooks Law Offices, *Unfair and Illogical: Florida’s Wrongful Death Medical Malpractice Law*, <https://www.fasigbrooks.com/2019/02/unfair-and-illogical-floridas-wrongful-death-med/>, last visited Feb. 27, 2025, (stating that “such limited recovery would not make a malpractice lawsuit financially feasible”).

<sup>20</sup> Sections 766.104, 766.106 and 766.203, F.S.

<sup>21</sup> Sections 766.104(3) and 766.204, F.S.

conduct a reasonable investigation of the claim and obtain a written opinion from a medical expert that malpractice occurred.<sup>22</sup> The claimant may then serve a notice of intent to initiate litigation on every prospective defendant. The suit may not be filed until at least 90 days after service of the notice.<sup>23</sup> During the 90 days, the parties must engage in pretrial discovery<sup>24</sup> and the prospective defendant must conduct an investigation.<sup>25</sup> If not resolved in the 90 days, the claimant may file suit. When filing the suit, the attorney must file a certificate that he or she has reviewed the evidence and has a good faith belief that a medical negligence case is warranted.<sup>26</sup> Failure of the claimant to pursue the pretrial process constitutes grounds for a dismissal of the claim. A failure of any party to the action to cooperate with the presuit process may be grounds to strike any claim or defense raised by the non-cooperative party.<sup>27</sup> After the presuit requirements are met, a claim of medical negligence generally proceeds through the court system like any other tort action.

### **III. Effect of Proposed Changes:**

The bill expands the application of the Florida Wrongful Death Act by repealing exceptions that prohibit certain parents and children of a deceased patient who dies due to medical negligence from recovering noneconomic damages. The bill provides that, where a wrongful death occurs as a result of medical negligence, a decedent's adult children may recover noneconomic damages if there is no surviving spouse and provides that the parents of an adult decedent may recover noneconomic damages if there is no surviving spouse or surviving minor or adult children.

The bill takes effect July 1, 2025.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

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<sup>22</sup> Sections 766.104(1) and 766.203(2), F.S.

<sup>23</sup> Section 766.106(4), F.S.

<sup>24</sup> Section 766.106(6) and 766.205, F.S.

<sup>25</sup> Section 766.203(3), F.S.

<sup>26</sup> Section 766.104(1), F.S.

<sup>27</sup> Section 766.106(7), F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may provide for wrongful death recoveries by parties who are barred by current law and thus may correspondingly increase medical malpractice insurance premiums or medical malpractice self-insurance costs of medical providers. Similarly, the availability of damages for mental pain and suffering may provide a sufficient incentive for plaintiff attorneys who work on a contingency-fee-basis to pursue more medical negligence lawsuits.

C. Government Sector Impact:

The bill may create an indeterminate negative fiscal impact on state and local governments to the extent that a state or a local government operates or controls a medical care facility. Any such claims, however, would be limited by the state's sovereign immunity limits.<sup>28</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 768.21, 400.023, 400.0235, and 429.295.

This bill reenacts the following sections of the Florida Statutes: 95.11 and 429.29.

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<sup>28</sup> Section 768.28, F.S.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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