

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.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 164

INTRODUCER: Senator Grall

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

DATE: November 3, 2025

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bond	Cibula	JU	Pre-meeting
2. _____	_____	ACJ	_____
3. _____	_____	RC	_____

I. Summary:

SB 164 expands Florida’s Wrongful Death Act to allow the parents of an unborn child to recover damages pursuant to the Act from a person who is responsible in tort for the death of the unborn child.

Under current law, damages for the death of an unborn child are not recoverable under the Wrongful Death Act. However, damages may be recoverable for the death of an unborn child who dies at 20 weeks or later into a pregnancy under the common wrongful stillbirth cause of action. In a wrongful stillbirth action, the damages parents may recover are limited to mental pain and anguish and medical expenses incident to the pregnancy. Damages are not recoverable for the death or miscarriage of an unborn child that occurs before the twentieth week of a pregnancy.

This bill defines “unborn child” as a human child at any gestational age and provides that the death of an unborn child gives rise to a statutory wrongful death action. The effect of these changes is to expand the types of damages recoverable by the parents of an unborn child, whether classified as stillborn or miscarriage, whose death was caused by a negligent act. Damages recoverable under the wrongful death law include medical or funeral bills and the past and future pain and suffering of the parents.

The bill also provides that the mother cannot be sued in a wrongful death action for the death of her unborn child. Similarly, a health care provider providing lawful medical care pursuant with the mother’s consent may not be sued in a wrongful death action related to the birth of the unborn child provided that the medical care was provided in compliance with the applicable standard of care. The bill specifies that lawful medical care includes assisted reproductive technologies.

The bill does not impact state revenues or expenditures. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2026.

II. Present Situation:

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.¹ This was the law at statehood, but over time 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."²

History of Wrongful Death Actions

The early versions of the state's wrongful death laws limited the right to recover damages to a surviving spouse, surviving children if there was no surviving spouse, those dependent upon the decedent for support if there was no one belonging to the prior two classes, and finally the executor of the decedent's estate if there was no one belonging to the prior three classes.³ In order to show dependence on the decedent, a claimant had to show that he or she was a minor, physically or mentally disabled, or elderly.⁴ Adults who were mentally and physically capable of providing for themselves could not recover despite having been supported by the decedent.⁵ Any damages recoverable were limited to a form of economic damages.

The wrongful death law was substantially re-written in 1972.⁶ 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.⁷ 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.⁸

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, which are types of noneconomic damages. Minor children, then defined as under age 21⁹ and unmarried, may also recover loss of parental

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

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

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

⁴ *Id.* at 101-102.

⁵ 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.

⁶ Chapter 72-35, Laws of Fla.

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

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

⁹ 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.

companionship and pain and suffering, both past and future. The parents of a deceased minor child may also recover pain and suffering, both past and future. Any survivor who paid final medical, funeral, and burial expenses of the deceased may recover the value of those expenses. 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 a child is married or dependent.¹⁰ 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.¹¹

In 1990, the Legislature generally expanded the class of survivors entitled to recover damages for pain and suffering in a wrongful death action.¹² 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 decedent may also recover damages for pain and suffering if there is no surviving spouse or surviving minor or adult children.¹³

Wrongful Death Actions for the Death of an Unborn Child

In 1978 the Florida Supreme Court held that an unborn fetus is not a “person” for purposes of Florida’s Wrongful Death Act (Act).¹⁴ Thus, the law was that when a person caused the death of an unborn child at any gestational age, the child’s parents could not recover civil damages under the Act for the death.¹⁵

In 1997 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.”¹⁶ However, in that same case, the Court recognized a common law action for “negligent stillbirth.” The Court emphasized that the damages recoverable in such action are limited to mental pain and anguish and medical expenses incurred incident to the pregnancy, and that such legal action is different from an action under the Wrongful Death Act, as follows:

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.¹⁷

¹⁰ Chapter 81-183, Laws of Fla.

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

¹² Chapter 90-14, Laws of Fla.

¹³ *Id.* (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.

¹⁴ *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978).

¹⁵ *Singleton v. Ranz*, 534 So. 2d 847 (Fla. 5th DCA 1988) (citing *Duncan v. Flynn*, 358 So. 2d 178 (Fla. 1978)).

¹⁶ *Tanner v. Hartog*, 696 So. 2d 705, 706 (Fla. 1997).

¹⁷ *Tanner*, 696 So. 2d at 708-09.

Therefore, Florida allows a limited recovery of damages for negligent stillbirth, but it does not recognize a cause of action for wrongful death based on the death of an unborn child. The term “stillbirth” refers to death that occurs on or after 20 weeks gestation, which is the halfway point of a normal pregnancy.¹⁸ The term “miscarriage” applies to a pregnancy that ends prior to 20 weeks of gestation.¹⁹ Current Florida common law is that the death of a fetus that is a miscarriage, that is, where the unborn child was less than 20 weeks of gestation, does not support any cause of action, and thus there is no tort recovery. The death of a stillborn fetus, that is, 20 weeks or later in gestation, may give rise to a wrongful stillbirth cause of action.

Florida remains one of the few states that currently do not recognize a cause of action for the wrongful death of an unborn child.²⁰ Forty-three states currently have some form of the cause of action. These statutes generally condition recovery based on the viability²¹ of the child in question.²²

Fifteen states afford a cause of action for the wrongful death of an unborn child at any stage of development.²³ Several of these states, however, provide an exception so that the mother cannot be sued for the wrongful death of her unborn child.²⁴

Three states, including Connecticut,²⁵ Georgia,²⁶ and Mississippi,²⁷ allow 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.²⁸

Twenty-five states allow 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

¹⁸ Centers for Disease Control, *About Stillbirth*, (Aug. 26, 2025) <https://www.cdc.gov/stillbirth/about/index.html>.

¹⁹ MedlinePlus, *Miscarriage*, <https://medlineplus.gov/ency/article/001488.htm> (last visited Oct. 31, 2025).

²⁰ *Stern v. Miller*, 348 So. 2d 303, 307–08 (Fla. 1977); The three other states include Iowa, Maine, and New Jersey. *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, 421–25 (N.J. 1988).

²¹ “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*, 7 J. LAW. BIOSCI. 1 (Jan.-Dec. 2020).

²² Only Wyoming remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.

²³ Alabama (*Hamilton v. Scott*, 97 So. 3d 728 (Ala. 2012); *Mack v. Carmack*, 79 So. 3d 597 (Ala. 2011)); Alaska (Alaska Stat. Ann. § 09.55.585); Arkansas (Ark. Code Ann. § 15-62-102); 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); 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)).

²⁴ See Kan. Stat. Ann. § 60-1901; Tex. Civ. Prac. & Rem. Code § 71.003.

²⁵ *Elderkin v. Mahoney*, No. CV156056191, 2017 WL 5178583 (Conn. Super. Ct. Sept. 28, 2017).

²⁶ *Porter v. Lassiter*, 91 Ga. App. 712 (1955); *Shirley v. Bacon*, 154 Ga. App. 203 (1980).

²⁷ Miss. Code Ann. § 11-7-13 (2018).

²⁸ Romanis, *supra*, note 20.

the mother's womb.²⁹ Of these 25 states, one state, Indiana, expressly prohibits a wrongful death action if the death of an unborn child is the result of a lawful abortion.³⁰

Finally, one state, Wyoming, remains undecided as to whether a cause of action for wrongful death exists as to an unborn child.³¹

III. Effect of Proposed Changes:

The bill expands Florida's Wrongful Death Act to allow the parents of an unborn child to recover noneconomic damages through the Act from a person who is responsible in tort for the death of their unborn child, regardless of the gestational age. The term "unborn child" is defined to mean "a member of the species *Homo Sapiens*, at any stage of development, who is carried in the womb." Thus, the bill authorizes a wrongful death action for an unborn child who is lost due to negligence at any stage of a pregnancy, whether the loss of the pregnancy is classified as miscarriage or stillbirth. The term "carried in the womb" is not defined but would appear to start upon successful fertilization of the egg in a natural (traditional) pregnancy, and upon implantation of a zygote in a pregnancy assisted by artificial means.

By authorizing a wrongful death action, the parents of the unborn child will not be limited to the damages available under the common law cause of action for negligent stillbirth. The parents, instead, are authorized to recover the full measure of the economic and noneconomic damages available under the Wrongful Death Act.

For a death classified as stillbirth, the damages available under the Wrongful Death Act will be similar to those that may be recovered under the common law wrongful stillbirth action. Damages authorized under the common law action are limited to the parents' "mental pain and anguish and medical expenses incident to pregnancy." Additional damages authorized under the Wrongful Death Act include funeral expenses for the unborn child.

²⁹ 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)); Tennessee (Tenn. Code Ann. § 2 0-5-106(c)); 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)).

³⁰ Ind. Code Ann. §34-23-2-1.

³¹ Wyoming has not determined whether an unborn child is a "person" under the state's Wrongful Death Act. But, the 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).

For a death classified as miscarriage, the damages recoverable pursuant to the expanded application of the Wrongful Death Act by the bill are damages for the parents' mental pain and suffering related to the death and the unborn child's medical and funeral expenses.

The bill does not authorize the recovery of damages for an unborn child's lost earnings or net accumulations or the value of lost support and services to be provided by the unborn child. This is consistent with the current law that does not authorize these recoveries by the parents of a child who suffered a wrongful death.

The bill does not change the statutory requirements for a wrongful death action pursuant to the Wrongful Death Act, including the requirement that the action be brought by the court-appointed personal representative.³²

The bill specifies that the mother of the unborn child may not sue in a wrongful death action related to the death of her unborn child. Also, a health care provider may not be sued in a wrongful death action related to the death of an unborn child, provided that the health care provider furnished lawful medical care with the consent of the mother and in compliance with the applicable standard of care. The bill specifies that the lawful medical care that qualifies for protection includes assisted reproductive technologies.³³

The bill is effective July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

³² See s. 768.20, F.S. (stating that the "action shall be brought by the decedent's personal representative, who shall recover for the benefit of the decedent's survivors and estate all damages"). See also s. 733.301(1)(b), F.S., which establishes an order of preference for appointing personal representatives for intestate estates (persons who die without a will).

³³ Assisted reproductive technology is defined at s. 742.13(1), F.S., to mean "those procreative procedures which involve the laboratory handling of human eggs or preembryos, including, but not limited to, in vitro fertilization embryo transfer, gamete intrafallopian transfer, pronuclear stage transfer, tubal embryo transfer, and zygote intrafallopian transfer."

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may increase private insurance rates to the extent that this bill provides for tort claim recoveries that are not paid under current law.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 768.18, 768.19, and 768.21.

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.