

Abortion—Civil Actions; SB 142

SB 142 creates a new section of law prohibiting civil actions for a claim of wrongful life or wrongful birth. The bill also prohibits recovery of damages in any civil action for any physical condition of a minor that existed at birth if such damages arise out of a claim that a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill defines "claim of wrongful birth" as a cause of action brought by a parent, guardian, or individual required to provide for the support of a minor seeking damages due to a physical condition of the minor that existed at the time of birth, and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill defines "claim of wrongful life" as a cause of action brought by or for a minor seeking damages for the minor due to a physical condition existing at birth, and which claims a person's action or omission contributed to the minor's mother not obtaining an abortion.

The bill clarifies that nothing in the new section should be deemed to create a new cause of action or preclude any otherwise proper cause of action based on a claim that, but for a person's wrongful action or omission, the death or physical injury of the mother would not have occurred, or the handicap, disease, or disability of an individual prior to birth would have been prevented, cured, or ameliorated so that the health and life of the individual was preserved.

The bill also amends the wrongful death statute to include "unborn child" within the definition of "person" for purposes of the statute. This change allows a wrongful death action for the death of an unborn child caused by the wrongful act or omission of another. "Unborn child" is defined as a living individual organism of the species *homo sapiens*, in *utero*, at any stage of gestation from fertilization to birth.

The bill clarifies that the provisions of the wrongful death statute do not apply to the death of an unborn child by means of an act committed by the mother, any lawful medical procedure performed by a physician or other licensed medical professional at the request of the pregnant woman or her guardian, the lawful dispensation or administration of lawfully prescribed medication, or a legal abortion.

Both the new section and the amendments to the wrongful death section include a severability clause.