

SESSION OF 2013

SUPPLEMENTAL NOTE ON SENATE BILL NO. 142

As Recommended by Senate Committee on
Judiciary

Brief*

SB 142 would create a new section of law prohibiting civil actions for a claim of wrongful life or wrongful birth. The bill would also prohibit 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 would define "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 would define "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 would clarify 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

ameliorated so that the health and life of the individual was preserved.

The bill would also amend the wrongful death statute to include “unborn child” within the definition of “person” for purposes of the statute, which would allow a wrongful death action for the death of an unborn child caused by the wrongful act or omission of another. “Unborn child” would be defined as a living individual organism of the species *homo sapiens*, in *utero*, at any stage of gestation from fertilization to birth.

The bill would clarify that the provisions of the wrongful death statute would 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 of administration of lawfully prescribed medication, or a legal abortion.

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

Background

In the Senate Judiciary Committee, Senator Pilcher-Cook, one of the co-sponsors of the bill, testified in support of the bill. A local attorney and a representative of Kansans for Life also testified in support of the bill. A representative of the Kansas Catholic Conference submitted written testimony supporting the bill. A representative of the Kansas National Organization for Women testified in opposition to the bill. A representative of the ACLU of Kansas and Western Missouri submitted written testimony opposing the bill.

The fiscal note prepared by the Division of the Budget on the bill indicates it would have no fiscal effect on the Kansas Department of Health and Environment or on the judicial branch.