HOUSE BILL No. 1282

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-23-2-1.

Synopsis: Wrongful death or injury of a child. Specifies that the law concerning the wrongful death or injury of a child: (1) does not apply to a legally performed abortion; and (2) applies to a fetus that has attained viability. Provides that the law concerning the wrongful death or injury of a child does not affect or supersede any other right, remedy, or defense provided by any other law.

Effective: July 1, 2009.

Welch, Van Haaften, Koch, Turner

January 13, 2009, read first time and referred to Committee on Public Policy.

C o p y

Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

C o p y

HOUSE BILL No. 1282

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-23-2-1, AS AMENDED BY P.L.3-2008, SECTION 242, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **(a) This section does not apply to an abortion performed in compliance with:**

(1) IC 16-34; or

(2) IC 35-1-58.5 (before its repeal).

~~(a)~~ **(b)** As used in this section, "child" means an unmarried individual without dependents who is:

(1) less than twenty (20) years of age; or

(2) less than twenty-three (23) years of age and is enrolled in a postsecondary educational institution or a career and technical education school or program that is not a postsecondary educational program.

The term includes a fetus that has attained viability (as defined in IC 16-18-2-365).

~~(b)~~ **(c)** An action may be maintained under this section against the person whose wrongful act or omission caused the injury or death of a

child. The action may be maintained by:

(1) the father and mother jointly, or either of them by naming the other parent as a codefendant to answer as to his or her interest;

(2) in case of divorce or dissolution of marriage, the person to whom custody of the child was awarded; and

(3) a guardian, for the injury or death of a protected person.

~~(c)~~ **(d)** In case of death of the person to whom custody of a child was awarded, a personal representative shall be appointed to maintain the action for the injury or death of the child.

~~(d)~~ **(e)** In an action brought by a guardian for an injury to a protected person, the damages inure to the benefit of the protected person.

~~(e)~~ **(f)** In an action to recover for the death of a child, the plaintiff may recover damages:

(1) for the loss of the child's services;

(2) for the loss of the child's love and companionship; and

(3) to pay the expenses of:

(A) health care and hospitalization necessitated by the wrongful act or omission that caused the child's death;

(B) the child's funeral and burial;

(C) the reasonable expense of psychiatric and psychological counseling incurred by a surviving parent or minor sibling of the child that is required because of the death of the child;

(D) uninsured debts of the child, including debts for which a parent is obligated on behalf of the child; and

(E) the administration of the child's estate, including reasonable attorney's fees.

~~(f)~~ **(g)** Damages may be awarded under this section only with respect to the period of time from the death of the child until:

(1) the date that the child would have reached:

(A) twenty (20) years of age; or

(B) twenty-three (23) years of age, if the child was enrolled in a postsecondary educational institution or in a career and technical education school or program that is not a postsecondary educational program; or

(2) the date of the child's last surviving parent's death;

whichever first occurs.

~~(g)~~ **(h)** Damages may be awarded under subsection ~~(e)(2)~~ **(f)(2)** only with respect to the period of time from the death of the child until the date of the child's last surviving parent's death.

~~(h)~~ **(i)** Damages awarded under subsection ~~(e)(1), (e)(2), (e)(3)(C),~~ **(f)(1), (f)(2), (f)(3)(C),** and ~~(e)(3)(D)~~ **(f)(3)(D)** inure to the benefit of:

(1) the father and mother jointly if both parents had custody of the

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child;

(2) the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by the court according to their respective losses; or

(3) a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

However, a parent or grandparent who abandoned a deceased child while the child was alive is not entitled to any recovery under this chapter.

(j) This section does not affect or supersede any other right, remedy, or defense provided by any other law.

SECTION 2. [EFFECTIVE JULY 1, 2009] **IC 34-23-2-1, as amended by this act, applies only to a cause of action that accrues after June 30, 2009.**

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