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ALLOW CIVIL ACTIONS FOR INJURY TO "UNBORN CHILDREN"

House Bill 5688

Sponsor: Rep. James Ryan

Committee: Judiciary and Civil Rights

Complete to 3-18-96

A SUMMARY OF HOUSE BILL 5688 AS INTRODUCED 3-14-96

The bill would amend the Revised Judicature Act to make an individual liable for damages whenever he or she were responsible for negligence, assault, or injury to a pregnant woman that caused death, injury, disfigurement, or disability to an "unborn child." ("Unborn child" would be defined by the bill to mean "the live unborn offspring of a human being at any time or stage of development from conception until birth.")

Who could sue. An action under the bill could be brought by a parent, sibling, or grandparent of the injured or dead unborn child.

Damages. In every action under the bill, the court or jury could award damages as they found fair and equitable. Damages could include reasonable medical, hospital, funeral, and burial expenses for which the plaintiff was liable and reasonable compensation for the pain and suffering undergone by the unborn child.

Who would be eligible for damages. Subject to the section of the Revised Probate Code which blocks benefits to relatives involved in the killing of a decedent, only the surviving parents, siblings, and grandparents who suffered damages would be entitled to damages under the bill. A person who might be entitled to damages under the bill would have to present a claim for damages to the plaintiff's attorney on or before the date set for hearing on the motion for distribution of the proceeds under the bill, and would have to advise the plaintiff's attorney -- within 60 days after service of the complaint and prescribed notice -- of any material fact he or she knew of that might constitute evidence of a claim for damages. A person's right to claim at a hearing any proceeds might be barred by the court if the person failed to advise the plaintiff as prescribed by the bill.

Notice by plaintiff to others. Within 30 days of the commencement of an action under the bill, the plaintiff would be required to serve a copy of the complaint and a notice upon others who might be entitled to damages (or to their guardian ad litem, if the person were a minor, a "disappeared person," or a legally incapacitated person). The prescribed notice would have to contain the following information:

(1) A statement saying (a) that in order to recover damages under the bill, the person who might be entitled to damages would have to present a claim for damages to the plaintiff's attorney on or before the date set for hearing on the motion for distribution of the proceeds under the bill and (b) that failure to present a claim for damages within the time provided would bar the person from making a claim to any of the proceeds;

(2) the name and address of the plaintiff and his or her attorney;

(3) a statement saying that the plaintiff's attorney would have to be advised, by the person receiving the prescribed notice, within 60 days after the notice was mailed of any material fact that might constitute evidence of any claim for damages and (b) that failure to do so might adversely affect his or her recovery of damages and could bar his or her right to any claim at a hearing to distribute proceeds; and

(4) a statement that the person who might be entitled to damages would be notified of a hearing to determine the distribution of the proceeds after the adjudication or settlement of the claim for damages.

Settlements. A court would be required, with or without notice, to conduct a hearing and approve or reject a proposed settlement if the plaintiff filed a motion asking leave of the court to settle a pending claim for damages under the bill.

Distribution of damages. The bill would prescribe the following procedure for distribution of the proceeds of a settlement or judgement. The plaintiff's attorney would file a motion for authority to distribute the proceeds, and, upon filing of the motion, the court would have to order a hearing. Unless waived, notice of the hearing would be served on everyone who might be entitled to damages under the bill in the time, manner, and method prescribed in rules applicable to probate court proceedings. (A fiduciary guardian ad litem would be appointed for any minors, "disappeared persons" as defined in the Revised Probate Code, or legally incapacitated people without an appointed fiduciary, and would receive the prescribed notice.) After a hearing by the court, the court would be required to order payment from the proceeds to the plaintiff for reasonable medical, hospital, funeral, and burial expenses for which he or she was responsible, but the proceeds couldn't be applied to the payment of any other charges incurred by the plaintiff. The court then would have to enter an order distributing the proceeds to eligible persons who suffered damages and to the plaintiff for compensation for conscious pain and suffering, if any, in the amount that the court or jury considered fair and equitable considering the relative damages sustained by the plaintiff and each of the eligible persons. If there were a special verdict by a jury in an action under the bill, damages would be distributed as provided in the special verdict. If none of the people entitled to the proceeds were minors, disappeared persons, or legally incapacitated persons, and if all of the people entitled to the proceeds executed a verified stipulation or agreement in writing in which the portion of the proceeds to be distributed to each was specified, then the court order would be entered in accordance with the stipulation or agreement.

If a claim under the bill was to be settled and a civil action for injury to, or death of, an unborn child was not pending, then distribution of the proceeds would be made under procedures prescribed in the "wrongful death" section of the Revised Probate Code.

Exemptions The bill would not apply to the following:

(a) acts committed by pregnant women;

(2) acts which are legally justified or excused (including lawful self-defense or defense of another);

(3) medical procedures performed by physicians or other licensed medical professionals at the request of a pregnant woman or her legal guardian; or

(4) the lawful dispensation or administration of legally prescribed drugs.

MCL 600.2922a

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.