

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1727 Session of
1981

INTRODUCED BY FREIND, CUNNINGHAM, MULLEN, PITTS, ROCKS, TRELLO,
MRKONIC, HORGOS, BLAUM, CIMINI, GRABOWSKI, WOGAN, BELARDI,
SERAFINI, CLYMER, TADDONIO, A. C. FOSTER, JR., VROON, FEE,
KENNEDY, MACKOWSKI, TELEK AND GRUPPO, JULY 1, 1981

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JULY 1, 1981

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 death actions and actions for wrongful birth and wrongful
4 life.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 8301 of Title 42, act of November 25,
8 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated
9 Statutes, is amended to read:

10 § 8301. Death action.

11 (a) General rule.--An action may be brought to recover
12 damages for the death of an individual caused by the wrongful
13 act or neglect or unlawful violence or negligence of another if
14 no action for damages was brought by the injured individual
15 during his lifetime. The state of gestation or development of a
16 human being when an injury is caused, when an injury takes
17 effect or at death, shall not foreclose maintenance of any cause
18 of action under the law of this Commonwealth arising from the

death or injury of a human being caused by wrongful act, neglect or default. There shall be no cause of action against a physician or a medical institution for the wrongful death of a fetus caused by an abortion where the abortion was permitted by law and the requisite informed consent was lawfully given. A cause of action for wrongful death or injury is not prohibited where the fetus is live-born but subsequently dies.

(b) Beneficiaries.--Except as provided in subsection (d), the right of action created by this section shall exist only for the benefit of the spouse, children or parents of the deceased, whether or not citizens or residents of this Commonwealth or elsewhere. The damages recovered shall be distributed to the beneficiaries in the proportion they would take the personal estate of the decedent in the case of intestacy and without liability to creditors of the deceased person under the statutes of this Commonwealth.

(c) Special damages.--The plaintiff in an action under subsection (a) shall be entitled to recover, in addition to other damages, damages for reasonable hospital, nursing, medical, funeral expenses and expenses of administration necessitated by reason of injuries causing death.

(d) Action by personal representative.--If no person is eligible under subsection (b) to bring an action under this section, the personal representative of the deceased may bring an action for the damages expressly specified in subsection (c).

Section 2. Title 42 is amended by adding a section to read:

§ 8304. Actions for wrongful birth and wrongful life.

(a) Wrongful birth.--There shall be no cause of action on behalf of any person based on a claim that, but for an act or omission, a human being once conceived would have been aborted.

1 (b) Wrongful life.--There shall be no cause of action on
2 behalf of any person based on a claim of that person that, but
3 for an act or omission, he or she would not have been conceived
4 or, once conceived, would have been aborted.

5 (c) Failure or refusal to perform, etc. abortion.--Failure
6 or refusal of any person to perform, advise, submit or consent
7 to an abortion shall not be a defense and shall not be
8 considered in awarding damages or child support in any action
9 but no such action shall be brought against a physician for
10 failure to perform an abortion or for failure to advise a woman
11 to submit to an abortion.

12 Section 3. This act shall not apply to any case in which a
13 final award of damages has been made and with regard to which
14 the time to take an appeal has expired without an appeal being
15 taken and shall not be construed to revive any cause of action
16 otherwise barred by the application of 42 Pa.C.S. Ch.55
17 (relating to limitation of time).

18 Section 4. This act shall have retroactive effect including
19 application to any case pending or on appeal.

20 Section 5. This act shall take effect immediately.