



ARIZONA STATE SENATE
Fiftieth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR S.B. 1359

civil liability; wrongful life; birth

Purpose

Stipulates a person is not liable for damages in a civil action for wrongful birth, wrongful life, or outlined expenses within a wrongful pregnancy or conception tort based on the claim a child should not or would not have been born, except for the defendant's action or omission.

Background

Throughout the country within the civil court system, there have been claims of wrongful birth, wrongful life and wrongful conception or pregnancy. In a *wrongful birth* claim, a plaintiff sues a defendant (health professional) for the negligent failure to diagnose and inform the plaintiff of a birth defect or condition, whereas if the plaintiff had known of the risk, would have avoided or terminated the pregnancy (<http://www.lexisnexis.com/>). In a *wrongful life* claim, the injured person (person born with birth defects) or someone on behalf of the injured person, alleges that the injury (being born) is due to the defendant's failure to advise the person's parents appropriately. That if not for the action (or omission) of the defendant, the person would not have been born. Generally, a *wrongful conception* or *wrongful pregnancy* claim is brought by the parent of a child who is born healthy, yet unplanned or unwanted. In this type of claim, the plaintiff alleges that the defendant's negligence failed to prevent the birth of the child.

Within civil litigation, one method used to determine cause is the *but for* test. *In this test, was there any other cause, or would it have occurred "but for" the defendant's actions?* (<http://dictionary.law.com/>). In applying this test, the court decides if the defendant's actions were the cause of the plaintiff's injury, or if the injury would have occurred regardless of the defendant's actions. If it is determined that the injury would still have occurred without the defendant's action (or omission), then there is no cause and therefore no negligence claim.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Specifies that a person is not liable for damages in a civil action for *wrongful birth* based on claim that a child would not or should not have been born, but for the act or omission of the defendant.

2. Stipulates that a person is not liable for damages in a civil action for *wrongful life* based on a claim that the person bringing the action would not or should not have been born, but for the act or omission of the defendant.
3. Specifies that a person is not liable for damages in a civil action for necessary expenses to raise a child within a *wrongful pregnancy* or *wrongful conception* claim that the child would not or should not have been conceived, but for an act or omission of the defendant.
4. States that these provisions apply to any claim regardless of whether the child was born healthy or with a birth defect or other adverse medical condition.
5. Specifies these provisions do not apply to civil action for damages for an intentional or grossly negligent act or omission, including one that violates criminal law.
6. Becomes effective on the general effective date.

Amendments Adopted by the Healthcare & Medical Liability Reform Committee

- Removes the word *negligent* from the wrongful life claim, thus mirroring the standard used in the other wrongful claims.

Senate Action

HMLR 2/8/12

DPA 3-2-1-0

Prepared by Senate Research

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