

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1170 (as enrolled)  
Sponsor: Senator William Van Regenmorter  
Senate Committee: Judiciary  
House Committee: Family and Civil Law

**PUBLIC ACT 423 of 2000**

Date Completed: 2-5-01

**CONTENT**

**The bill amends the Revised Judicature Act to prohibit claims for wrongful birth, wrongful life, wrongful pregnancy, or wrongful conception. The bill states that this prohibition applies regardless of whether the child is born healthy or with a birth defect or other adverse medical condition. The prohibition does not apply to a civil action for damages for an intentional or grossly negligent act or omission, including an act or omission that violates the Michigan Penal Code.**

Specifically, the bill prohibits a person from bringing a civil action on a wrongful birth claim that, but for an act or omission of the defendant, a child or children would not or should not have been born.

The bill also prohibits a person from bringing a civil action for damages on a wrongful life claim that, but for the negligent act or omission of the defendant, the person bringing the action would not or should not have been born.

In addition, the bill prohibits a person from bringing a civil action for damages for daily living, medical, educational, or other expenses necessary to raise a child to the age of majority, on a wrongful pregnancy or wrongful conception claim that, but for an act or omission of the defendant, the child would not or should not have been conceived.

The bill applies only to a cause of action arising on or after the bill's effective date (March 28, 2001).

MCL 600.2971

**BACKGROUND**

A 1999 opinion of the Michigan Court of Appeals discusses the state of Michigan law concerning wrongful birth, wrongful life, wrongful pregnancy, and wrongful conception claims (*Taylor v Kurapati*, 236 Mich App 315). Based on the Court's opinion, these claims are briefly described below.

**Wrongful Birth**

A wrongful birth tort "...usually involves an allegation of a negligent failure relatively early in the pregnancy to inform the parents of the risk of birth defects". This claim is brought by the parents of a child who was born with disabilities. In a wrongful birth case, the plaintiffs typically allege that the defendant's negligence deprived them of the opportunity to decide whether to avoid or terminate a pregnancy.

Although previous decisions of the Michigan Court of Appeals had recognized the wrongful birth tort, the panel in *Taylor* held, "...it has no continued place in our jurisprudence". This holding barred any cause of action for wrongful birth in a complaint filed after the release of the opinion.

(The Court also distinguished between the wrongful birth tort and "other, more firmly established torts of birth-related medical malpractice". The Court pointed out that Michigan has long recognized that causes of action exist in cases involving babies born with disabilities. "In such cases, courts and juries have held physicians and other health professionals liable for birth- or pregnancy-related disabilities caused in whole or in part by their negligence. These cases generally involve negligence occurring fairly close in time to, if not contemporaneous with, the birth itself... Further, ...they do not involve an allegation that the negligence deprived the parents of the opportunity to terminate the pregnancy. In other words, such cases are simply a typical claim of medical malpractice injuring a person. The are *not* wrongful birth claims

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because they involve no allegation that the baby involved should never have been born, but rather involve an allegation that, absent malpractice, the same baby would have been born without certain injuries.”)

#### Wrongful Life

A wrongful life claim is brought by or on behalf of a child who was born with birth defects. The child alleges that he or she was born because of the doctor’s negligent failure to advise the child’s parents properly. That is, if not for the doctor’s negligence, the child would not have been born. The wrongful life cause of action has not been recognized in Michigan.

#### Wrongful Conception or Pregnancy

A claim for wrongful conception or wrongful pregnancy is brought by parents of a healthy, but unplanned, baby. The plaintiffs allege that the defendant’s negligent conduct failed to prevent the birth of a child in the following situations:

- The parents conceived because a physician negligently performed a vasectomy or tubal ligation, or a physician, pharmacist, or other health professional provided any other type of ineffective contraception.
- A physician negligently failed to diagnose a pregnancy, thereby denying the mother the choice of terminating the pregnancy at a timely stage.
- A physician negligently attempted to terminate a pregnancy.

The Michigan Court of Appeals has recognized a cause of action for wrongful conception. The Court, however, has denied the recovery of the costs of raising a healthy, normal child, but has not ruled out a wrongful conception action for medical costs and pain and suffering. The panel in *Taylor* stated that it did not address “...the issue of whether wrongful conception claims...remain tenable”.

Legislative Analyst: S. Lowe

#### **FISCAL IMPACT**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman