



Understanding Florida's Wrongful Death Act, Statute § 768.21(8) Relevant Bills: HB 6011 & SB 262 | HB 6039 & SB 560

Florida Statute § 768.21(8) provides limitations for who can bring a lawsuit against a medical facility or healthcare provider if their medical negligence causes the wrongful death of a patient.

This is the actual statute, word for word:

Section (3): Minor children of the decedent, and all children of the decedent if there is no surviving spouse, may also recover for lost parental companionship, instruction, and guidance and for mental pain suffering from the date of injury. For the purposes of this subsection, if both spouses die within 30 days of one another as a result of the same wrongful act or series of acts arising out of the same incident, each spouse is considered to have been predeceased by the other.

**What this means is that in the case of wrongful death of a parent, minor children (children under 25 as defined by the Wrongful Death Statute), and all children of the deceased are eligible to file a lawsuit in a court of law.*

Section (4): Each parent of a deceased minor child may also recover for mental pain and suffering from the date of injury. Each parent of an adult child may also recover for mental pain and suffering if there are no other survivors.

**What this means is that parents of adult children may also file a claim to recover damages if the adult child was not married and has no children.*

Section (8): The damages specified in subsection 3 shall not be recoverable by adult children and the damages specified in subsection (4) shall not be recoverable by parents of an adult child with respect to claims for medical negligence as defined by s. 766.106(1).

**What this means is that if the wrongful death was due to medical negligence or error, the parents of an adult deceased and adult children of the deceased may not file a lawsuit. Only a spouse or minor child is not precluded. A minor child is described as anyone under age 25. There is no option available to those groups of individuals to seek redress or justice in court.*

Persons age 24 and above, without a spouse and without a minor child are therefore eligible to be a Florida Free Kill (Victim of the Wrongful Death Act)

The current situation



ONLY in the State of Florida, certain classes of people are being denied rights when negligent death occurs to a family member.

- All persons age 24 and above, without a spouse and without a minor child are therefore eligible to be a Florida Free Kill (Victim of the Wrongful Death Act) Florida Statute § 768.21(8) denies unmarried adults without minor children equal protection under the law and deprives the survivors of these individuals of their right to access the courts for redress as enumerated by the Florida Constitution in the case of medical negligence causing death.
- The Florida Free Kill Law arbitrarily without reason punishes the most grievously injured and their surviving family members

The problem:

- This law provides an opening for a culture of a lack of accountability (that does not exist anywhere else) among Florida medical practitioners and facilities.
- Increases Medicare payments and healthcare costs
- This law is discriminatory against
 - 2.3 million unmarried graduate students
 - 6.8 million widowed seniors
 - LGBT community
 - Divorced and widowed adults whose children are no longer minors
 - Tourists and part-time residents to Florida who are unmarried, minus a minor child
 - **Any unmarried adult without a child**
 - **An average of 2,000 people per year join Florida Medical Rights Association because they lost a loved one in the free kill category**

What is NOT the problem but has been used to keep this law in place:

- Florida does not have a shortage of doctors (See 2020 Physician Workforce Annual Report - Gov. Ron Desantis)
- Medical malpractice insurance rates have continued to rise in spite of this statute §768.21(8), therefore this law has not affected them

How the new law resolves it:

- When it comes to human life, accountability is non negotiable. It allows Florida to join the rest of the country in not discriminating against unmarried adults
- By holding medical practitioners accountable we increase the quality and safety of healthcare and decrease medical errors (the third leading cause of death)
- Eliminating an outdated unconstitutional and discriminatory law. Federal law states that breaking the constitution is a felony
- When a victim prevails in a wrongful death suit, the healthcare provider must pay back Medicaid, Medicare and health insurance companies. In Florida, if the victim falls into the “Free Kill” category of a wrongful death case, the hospital does not have to pay back said organizations and the victims are left without recourse. Changing this would decrease the cost of care.
- Repeal of §768.21(8) allows Florida's doctors who repeatedly fail to meet medical standards to have consequences