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SENATE BILL NO. 674

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 27, 2012)

(Patrons Prior to Substitute—Senators Stanley and Garrett)

A *BILL to amend and reenact § 8.01-50 of the Code of Virginia, relating to action for death by wrongful act; fetal death.*

Be it enacted by the General Assembly of Virginia:**1. That § 8.01-50 of the Code of Virginia is amended and reenacted as follows:**

§ 8.01-50. Action for death by wrongful act; how and when to be brought.

A. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, or of any ship or vessel, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action, or to proceed in rem against such ship or vessel or in personam against the owners thereof or those having control of her, and to recover damages in respect thereof, then, and in every such case, the person who, or corporation or ship or vessel which, would have been liable, if death had not ensued, shall be liable to an action for damages, or, if a ship or vessel, to a libel in rem, and her owners or those responsible for her acts or defaults or negligence to a libel in personam, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances, as amount in law to a felony.

B. *Whenever a fetal death, as defined in § 32.1-249, is caused by the wrongful act, neglect, or default of any person, ship, vessel, or corporation, the natural mother of the fetus may bring an action pursuant to this section against such tortfeasor. Nothing in this section shall be construed to create a cause of action for a fetal death against the natural mother of the fetus.*

BC. Every such action under ~~this section~~ subsection A shall be brought by and in the name of the personal representative of such deceased person ~~within the time limits specified in § 8.01-244. Actions for fetal death under subsection B shall be brought by and in the name of the natural mother; provided, however, if the natural mother dies, or is or becomes a person under a disability as defined in § 8.01-2,~~ such action may be initiated or maintained by the administrator of the natural mother's estate, her guardian, or her personal representative qualified to bring such action. In an action for fetal death under subsection B brought under Chapter 21.1 (§ 8.01-581.1 et seq.) where the wrongful act that resulted in a fetal death also resulted in the death of another fetus of the natural mother or in the death or injury of the natural mother, recovery for all damages sustained as a result of such wrongful act shall not exceed the limitations on the total amount recoverable for a single patient for any injury under § 8.01-581.15. The person bringing an action under subsection B shall have the power to compromise a claim pursuant to § 8.01-55 and any damages recovered shall be distributed pursuant to this article. Every such action under this section shall be brought within the time limits specified in § 8.01-244.

CD. If the deceased person was an infant who was in the custody of a parent pursuant to an order of court or written agreement with the other parent, administration shall be granted first to the parent having custody; however, that parent may waive his right to qualify in favor of any other person designated by him. If no such parent or his designee applies for administration within ~~thirty~~ 30 days from the death of the infant, administration shall be granted as in other cases.

E. For purposes of this section, "natural mother" means the woman carrying the child.