Sponsored by:
Assemblyman JAY WEBBER
District 26 (Essex, Morris and Passaic)

SYNOPSIS
Prohibits wrongful life/birth suits.

CURRENT VERSION OF TEXT
As introduced.
AN ACT concerning certain civil actions and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. a. Wrongful birth. There shall be no cause of action or award of damages on behalf of any person based on a claim that, but for an act or omission of the defendant, a person once conceived would not or should not have been born.

b. Wrongful life. There shall be no cause of action or award of damages on behalf of any person based on a claim of that person that, but for an act or omission of the defendant, the person would not have been conceived or, once conceived, would not or should not have been born.

c. Nothing contained in this section shall be construed to provide a defense against any proceeding charging a health care provider with intentional misrepresentation.

The provisions of this section do not prohibit a cause of action or the awarding of damages, except as specifically provided in this section, by or on behalf of any person based on the claim that a person is liable for injury caused by such person's willful acts or caused by such person's want of ordinary care or skill.

2. This act shall take effect immediately and apply to any action accrued on or following the effective date.

STATEMENT

This bill prohibits causes of action for wrongful life and birth lawsuits. It is modeled principally after Pennsylvania’s statute. Eight other states have similar laws. The lawsuits prohibited by this bill violate the tenets of traditional tort law. For example, in traditional tort law, in order for one to be liable for the injuries of another, one’s actions actually must cause the injuries. But in wrongful birth and life suits, the defendants have not caused any harm to the unborn child. Tort claims also require damages commensurate with the injury suffered. These lawsuits raise the unanswerable question of how to compare the value of a life with a disability to the alternative—never having lived at all.

By freeing healthcare providers from liability for wrongful life and birth suits, this bill seeks to improve the doctor-patient relationship. With this reform, physicians and others will feel less pressure to practice “defensive medicine” to avoid accusations of malpractice. Patients will be free from subtle coercion to end a pregnancy coming from a doctor or geneticist anxious to remove the potential for a lawsuit. The bill also addresses lawsuits that increase
medical malpractice insurance rates, adding greatly to the overall
cost of healthcare. This is especially true in the field of obstetrics.
The high cost of malpractice coverage has led to a shortage of
obstetricians in New Jersey, denying many pregnant women
accessible and affordable care.

This bill does not remove liability for a healthcare provider who
makes an intentional misrepresentation or causes a traditional injury
by their willful act or want of ordinary care or skill.

Another goal of this bill is to affirm the dignity and value of the
lives of the disabled and the commitment of their parents. Wrongful
birth and life suits marginalize and stigmatize the disabled by
communicating the message to all disabled people that their
differences make their lives not worth living—that they would be
better off dead. Worse, in an unseemly spectacle they put parents in
the position of testifying to that effect in open court about their own
children, who will either hear these sentiments or later read them in
a record that will endure. This bill would instead communicate and
enshrine the principle that no person can ever be considered a legal
harm.