

**SENATE BILL REPORT**

**SB 5506**

**AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 6, 1991**

**Brief Description:** Pertaining to survival of actions.

**SPONSORS:** Senator Gaspard.

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 5506 be substituted therefor, and the substitute bill do pass.

Signed by Senators Nelson, Chairman; L. Kreidler, Madsen, Rasmussen, and A. Smith.

**Staff:** Dick Armstrong (786-7460)

**Hearing Dates:** February 21, 1991; March 6, 1991

**BACKGROUND:**

When a person dies as a result of the negligent acts of another person, there are several statutes which allow the decedent's spouse and children to collect damages from the tortfeasor. However, the estates of single adults who do not have children or dependent parents are generally precluded from collecting any damages.

RCW 4.20.020, the "wrongful death" statute and RCW 4.20.060 provide causes of action only if the decedent left a spouse, children, or financially dependent parents or siblings. RCW 4.24.010, the parent's consortium statute, provides no cause of action to the decedent's parents unless the decedent was a minor or a parent was financially dependent on the child.

Similarly, RCW 4.20.046, the "survival statute," only allows the decedent's estate to collect damages if it can demonstrate a significant loss of prospective earnings.

The estate of an adult developmentally disabled person is essentially unable to collect the damage award from a tortfeasor because developmentally disabled persons generally cannot demonstrate a significant loss of prospective earnings, and they generally do not have spouses or children.

**SUMMARY:**

The financial dependency limitations in the wrongful death statutes are eliminated. Parents, brothers and sisters are allowed a cause of action for a decedent's personal injury or death. The parents consortium statute is also modified to allow parents to maintain a cause of action for the death of any child.

Damages allowable under the general "survival statutes" of the wrongful death act are expanded to included damages for the loss of the person's life or life's enjoyment. Any damage award against the state of Washington or any state residential habilitation center cannot be reduced to pay for the cost of a resident of a state residential habilitation center.

**EFFECT OF PROPOSED SUBSTITUTE:**

Parents' Consortium Statute: RCW 4.24.010, the parents' consortium statute, is amended to allow a mother or father whose child has been negligently injured or killed to collect damages for the loss of the parent-child relationship and the parents' grief for the child's death. In addition, parents can only collect damages for medical expenses if the parent actually paid the expenses.

General Wrongful Death Statute: Sections 1 and 2 of the original bill are deleted. These sections would have allowed a parent, brother or sister to recover economic damages for the death of a person, regardless of whether the surviving relative was financially dependent on the deceased.

Survival Statute -- Wrongful Death: Section 3 of the original bill is deleted which would have allowed an estate to recover noneconomic damages suffered by the decedent "for the loss of life's enjoyment."

Rehabilitation Centers: Any damage award against the state of Washington cannot be reduced to pay for the costs of a resident at a state rehabilitation center.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

Every life is valuable and there should be compensation for its loss. Compensation in a wrongful death action should not depend on the person's financial or marital status.

**TESTIMONY AGAINST:**

Parents should not be able to recover for a child's pain and suffering, or for the residual value of a child's estate. When a child dies, parents should be able to recover for their loss of consortium with the child.

**TESTIFIED:** Jeff Tilden, Washington Defense Trial Lawyers (con); Michael McCarthy, attorney (pro); Michele Radosevich, WSTLA (pro)