

HOUSE BILL REPORT

SB 5077

As Passed House
April 7, 1993

Title: An act relating to survival of actions and damages.

Brief Description: Specifying when damages for pain and suffering of a deceased person may be recovered by survivors.

Sponsors: Senator Vognild.

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DP;
Passed House, April 7, 1993, 98-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 16 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Padden, Ranking Minority Member; Ballasiotes, Assistant
Ranking Minority Member; Campbell; Chappell; Forner;
Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott;
Tate; and Wineberry.

Staff: Margaret Allen (786-7191).

Background: A person's right to assert a legal cause of action generally survives the person's death and, in most cases, may be exercised by the personal representative of his or her estate.

However, a claim for damages based upon a decedent's pain and suffering, anxiety, emotional distress or humiliation survives only if the injury that caused the damages also caused the decedent's death.

The beneficiaries of a wrongful death action include the decedent's surviving spouse or children, including stepchildren, or if the decedent dies leaving no spouse or children, the decedent's dependent parents or siblings residing in the United States at the time of the death.

Summary of Bill: The personal representative of an estate is entitled to recover damages for pain and suffering, anxiety, emotional distress, or humiliation suffered by a

decedent, regardless of whether the injury that caused the damages also caused the death.

The damages may be recovered on behalf of the same individuals who would be beneficiaries in a wrongful death action.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The current law encourages insurance claims managers to delay settling cases. This bill would close a loophole in the current law.

Testimony Against: Pain and suffering is personal to the decedent. Claims for pain and suffering, anxiety, humiliation, and emotional distress are hard to evaluate when the person who experienced the injuries is deceased.

Witnesses: Senator Vognild, prime sponsor (pro); Larry Shannon, Washington State Trial Lawyers Association (pro); and Robert Tee, State Farm Insurance Company (con).