

SENATE BILL REPORT

SB 5734

As of February 21, 2005

Title: An act relating to civil actions following wrongful injury or death.

Brief Description: Revising provisions relating to civil actions following wrongful injury or death.

Sponsors: Senators Fairley, Kline, McCaslin, Thibaudeau, Weinstein, Deccio, Rasmussen and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 2/17/05.

SENATE COMMITTEE ON JUDICIARY

Staff: Lilah Amos (786-7429)

Background: Causes of action for wrongful death are created by statute, not common law. Death claims in Washington can be brought pursuant to wrongful death statutes and statutes governing survival of actions. Wrongful death statutes govern post-death damages of the deceased and are for the benefit of beneficiaries specified by statute. Survival statutes govern pre-death damages, and allow continuation of any action which the decedent could have brought if he or she had survived.

Currently a decedent's spouse and children can collect damages from the tortfeasor who caused the death. However, if a single adult has no children, the adult's parents and brothers and sisters can maintain an action only if they are dependent upon the deceased for support and are resident within the United States. The Washington Supreme Court has interpreted the support requirement to mean financial dependence, not emotional or psychological support.

A parent of a minor child who has regularly contributed to the child's support, or who is dependent on the child for support, can bring an action for the injury or death of the child. In addition to economic damages, the parent of a minor child is entitled to recover damages for the loss of love and companionship of the child and for injury to or destruction of the parent-child relationship. A parent of an adult child is not authorized by statute to recover damages based upon the loss of companionship of the adult child.

Before 1993, a decedent's estate was not allowed to recover damages for pain and suffering of the decedent. In 1993 the Legislature amended the survival statutes to allow a decedent's estate to recover damages for pain and suffering, anxiety, emotional distress, and humiliation personal to and suffered by the decedent prior to death. However, recovery of these damages and others such as the loss of enjoyment of life for the period after the decedent's death is not allowed.

Summary of Bill: The requirement that wrongful death actions involving childless single adults can only benefit those parents, sisters, or brothers of the decedent who are dependent on the adult for support and who reside in the United States is eliminated. Any parent or sibling of a childless single adult can be the beneficiary of such a lawsuit.

Non-economic damages which can be recovered in wrongful death actions are expanded to include the decedent's loss of life, enjoyment of life, and shortened life expectancy.

The requirement that parents of minor children must have contributed to or received financial support from the child in order to maintain an action for injury or death to the child is eliminated. Parents must have significant involvement in the child's life, including giving or receiving emotional, psychological, or financial support to or from the child, in order to maintain an action. Damages which can be recovered by parents of a child in an action for death or injury are expanded to include loss of the child's emotional support. These provisions apply to all parent-child relationships, regardless of whether the child has attained the age of majority.

Appropriation: None.

Fiscal Note: Requested on February 18, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: Washington's wrongful death and survival statutes are disorganized, confusing, and very difficult to use. This bill simplifies this area of the law and corrects inequities. The bill allows parents to recover damages for wrongful death of a child regardless of the age of the child and regardless of the financial dependence of parents on the child at the time of death. It also permits a wrongdoer to be held accountable if a prosecutor declines to file a criminal action.

Testimony Against: Existing Washington law works well. Courts have clarified existing law, and there are no significant areas of confusion or increases in reckless or negligent government activity which necessitate reform. If parents of deceased adult children are given standing to sue for damages, the number of lawsuits and the amount of claims will expand significantly, as occurred when a superior court judge allowed such a claim to go forward in contravention of statute. This bill will increase defense costs and number of trials and will result in fewer out-of-court settlements.

Who Testified: PRO: Senator Brian Weinstein, prime sponsor; William S Bailey; Larry Shannon, Washington State Trial Lawyers Association.

CON: Rene Tomisser, Attorney General's Office; Cliff Webster, Liability Reform Association; Kris Tefft, Association of Washington Business; Jayne Freeman, Washington Defense Trial Lawyers Association.