

HOUSE BILL REPORT

HB 1873

As Reported by House Committee On:

Judiciary
Appropriations

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

Brief Description: Changing the requirements for, and recoveries under, a wrongful injury or death cause of action.

Sponsors: Representatives Ormsby, Haler, Pedersen, Wood, VanDeWege, Campbell, Flannigan, Kessler, Williams and Lantz.

Brief History:

Committee Activity:

Judiciary: 2/16/07, 2/27/07 [DPS];
Appropriations: 3/3/07 [DPS(JUDI)].

Brief Summary of Substitute Bill

- Amends the child death statute to allow a parent who regularly contributed to the support of an adult child who is under the age of 26 to bring an action for the wrongful injury to or death of that child without having to show that the parent was substantially dependent on the child.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Goodman, Vice Chair; Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Flannigan and Ross.

Staff: Edie Adams (786-7180).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

At common law, there was no right of recovery for a person's wrongful death. The Legislature has provided for causes of action for wrongful death by statute. Wrongful death statutes provide a new cause of action on behalf of specified beneficiaries for damages they suffer as a result of the decedent's death.

The child death statute allows a parent to bring a cause of action for the wrongful injury or death of a child. The parent may bring the action for the death of a minor child if the parent has regularly contributed to the child's support. Intent language included in a 1998 amendment to this statute provided that "support" includes emotional, psychological, or financial support.

The parent of an adult child who is wrongfully killed or injured does not have a cause of action under the child death statute unless the parent is dependent on the adult child. Case law interpreting this dependency requirement has held that there must be substantial financial dependency on the part of the parent, which the courts have described as "a substantial need on one side and a substantial financial recognition of that need on the other side."

The child death statute lists the following recoverable damages: medical, hospital, and medication expenses; loss of the child's services and support (contributions the child would have made to the parent's support); loss of the child's love and companionship; and injury to or destruction of the parent-child relationship (which includes mental anguish, grief, and suffering).

The action may be brought by either or both parents, but only one cause of action is created. If the parents are separated or not married to each other, damages may be awarded to each parent separately.

Summary of Substitute Bill:

The child death statute is amended to allow a parent who regularly contributed to the support of an adult child who is under the age of 26 to bring an action for the wrongful injury to or death of that child without having to show that the parent was substantially dependent on the child for support.

Substitute Bill Compared to Original Bill:

The original bill contained numerous revisions to the wrongful death statute, child death statute, and the general and special survival statutes, especially in the areas of beneficiaries and recoverable damages. The original bill:

- included amendments to the wrongful death statute to specifically state that both economic and non-economic damages suffered by the beneficiaries are recoverable;
- removed the dependency and residency requirements for the secondary beneficiaries under the general wrongful death statute and the special survival statute;
- amended the child death statute to allow the parent of a minor or adult child to sue without having to show dependency on the child if the parent has had significant

involvement in the child's life, including giving or receiving emotional, psychological, or financial support; and

- included amendments to the special survival statute to specifically list "loss of life itself, loss of enjoyment of life, and shortened life expectancy" as recoverable damages and to remove the financial dependency and residency requirements for the secondary beneficiaries.

Appropriation: None.

Fiscal Note: Requested on February 16, 2007.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill will honor the value of family relationships and how our notion of family has evolved over time. It will update our law to include the complexities of families in our modern society, including the relationship of parents with children who are 18 years of age or older. Why wouldn't the Legislature want to do something that honors and increases the value of families across the state?

Our civil justice system is generally designed to compensate injured persons for the harmful conduct of others and to provide a strong deterrent to reckless and wrongful conduct. Our laws are failing that purpose. We are an outlier among the states as a result of not having punitive damages and because of the anomalies of these statutes. In Washington, to use the famous words of Dean Prosser, it is still better to kill a person under these laws than it is to seriously injure the person. Justice is denied in our state for these families and parents who suffer the ultimate loss of a child or a family member.

People with disabilities are disproportionately impacted by the inadequacies of our laws because they are less likely to have jobs and less likely to have spouses or children.

We need to make the current wrongful death statute more just so that it allows parents to have their day in court. It is the jury who should decide the value of a lost relationship between a parent and a child. The current law draws an arbitrary line at age 18. It is unconscionable for the state to not recognize that a parent suffers a loss just because the child is 18 years old. All parent-child relationships are valuable and should be recognized as vital in our civil law system.

Words can't do justice to the impact of the loss of a child. It is the ultimate loss. The grief a parent suffers can have devastating impacts on the parent's work, physical health, and marriage. There is also suffering based on the longing for the things that might have been. This bill is necessary to ensure that parents have the right to seek justice and fair compensation on behalf of their children. Society as a whole has a substantial stake in seeking justice whenever the loss of a human life occurs.

(Opposed) This bill will have substantial impacts on liability and could cause an enormous escalation of damages in wrongful death cases. The bill overturns the *Otani* and *Phillipides* decisions. The decisions in those cases did not change the law. Allowing damages for loss of enjoyment of life that isn't actually suffered isn't compensatory; it's punitive.

This bill will impose a substantial and unwarranted expansion of liability for public entities. Smaller governmental entities are already struggling to operate with scarce resources, and the increase in their liability exposure from this bill could be devastating. The state annually defends about 20 to 25 wrongful death cases, and under this bill the potential damages in those types of cases would be substantially expanded.

This bill is a significant backtrack from the medical malpractice compromise that was reached last year and will disrupt the balance that was reached at that time.

Persons Testifying: (In support) Representative Ormsby, prime sponsor; Larry Shannon, Washington State Trial Lawyers Association; Mark Strull, Washington Protection and Advocacy System; James Headley, Professor, Eastern Washington University; Suzanne Kirkpatrick; and Bridgett Malmoe.

(Opposed) Mary Spillane, Physicians Insurance and Liability Reform Coalition; Jayne Freeman, Washington Defense Trial Lawyers Association; Rene Tomisser, Office of the Attorney General; Eric Faison, Association of Washington Cities; Cliff Webster, Washington State Medical Association; and Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 23 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McDermott, McDonald, McIntire, Morrell, Pettigrew, Seaquist, P. Sullivan and Walsh.

Minority Report: Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Hinkle, Kretz and Priest.

Staff: Kristen Fraser (786-7148).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Judiciary:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The state risk management task force examined the situations that give rise to preventable tragedies. In the last couple of years, state tort liability payments have been cut in half. By looking at what went wrong, the review teams established by the task force prevent harm from occurring in the future. This issue is about entities who are legally responsible for harm versus injured families.

(Opposed) This bill affects local governments. The underlying bill attempts to overturn two state Supreme Court cases. Eighteen may be an arbitrary age to end the cause of action for child wrongful death, but what other age could be chosen? Eighteen is the age of majority, the age where a person can enter a contract, vote, and join the military. There are good public policy reasons to use age 18 as the cut-off for liability under the statute. Many local governments will have wrongful death cases filed against them under this bill. The fiscal impact on local government should be considered. Local governments are unable to change their obligations and conduct, and are opposed to this new liability exposure.

Persons Testifying: (In support) Larry Shannon, Washington State Trial Lawyers Association.

(Opposed) Cliff Webster, Liability Reform Coalition; Mel Sorensen, Washington Defense Trial Lawyers; and Jim Justin, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.