
Judiciary Committee

HB 1873

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 Summary of Bill

- Amends both of the wrongful death statutes and the general survival statute relating to the beneficiaries of these actions and the damages that are recoverable.

Hearing Date: 2/16/07

Staff: Edie Adams (786-7180).

Background:

At common law, a person's cause of action did not survive the person's death, and there was no right of recovery for a person's wrongful death. The Legislature has provided for such actions through four interrelated wrongful death and survival statutes: (1) the general wrongful death statute; (2) the child death statute; (3) the general survival statute; and (4) the special survival 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. In contrast, survival statutes do not create a new cause of action; rather, they allow for the continuation of any causes of actions that the decedent could have brought had he or she survived.

General Wrongful Death Statute: Under the general wrongful death statute, the personal representative of the deceased may bring a cause of action on behalf of specified beneficiaries for damages suffered as a result of the decedent's death. The statute does not specify the types of damages that are recoverable, however case law has established that actual pecuniary losses may be recovered. "Pecuniary losses" include not only actual monetary losses, but also intangible losses such as the loss of the decedent's support, services, love, affection, care, companionship,

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society, and consortium. Damages are not available for the mental anguish, grief, or suffering of the survivors.

The wrongful death statute creates two tiers of beneficiaries. The primary beneficiaries are the decedent's spouse and children and they are automatically entitled to recovery under the statute. The secondary beneficiaries are the parents and siblings. They are entitled to recover under the statute only if there are no primary beneficiaries, they were dependent on the decedent for support, and they resided within in the United States at the time of the decedent's death.

Child Death Statute: The child death statute allows a parent to bring a cause of action for the wrongful injury or death of a minor child if the parent regularly contributed to the child's support, or an adult child if the parent was substantially dependent on the adult child for support. The 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.

General Survival Statute: The general survival statute continues any cause of action that the decedent could have brought prior to death. An action under the general survival statute is brought by the decedent's personal representative and is for the benefit of, and passes through, the decedent's estate. The damages that are recoverable for the estate are the pecuniary losses to the estate such as lost earnings, medical and hospital expenses, and funeral and burial expenses. In addition, the personal representative may recover, on behalf of the beneficiaries listed under the wrongful death statute, damages for the decedent's pain and suffering, anxiety, emotional distress, and humiliation. Under court decision, damages for the decedent's loss of enjoyment of life due to a shortened life expectancy are not recoverable.

Special Survival Statute: The special survival statute provides a cause of action for personal injuries that resulted in the decedent's death. The action may be brought by the executor or administrator of the decedent's estate and is for the benefit of, and is distributed directly to, beneficiaries. As in the general wrongful death statute, there are two tiers of beneficiaries. The primary beneficiaries are the spouse and children of the decedent. The secondary beneficiaries are the parents and siblings if they were dependent on the decedent for support and resided in the United States at the time of the decedent's death.

The statute does not specifically list the damages that are recoverable. Under case law, the recoverable damages include the decedent's lost earnings; medical and funeral expenses; and the pain and suffering, anxiety, emotional distress, and humiliation suffered by the decedent. Damages for the decedent's loss of enjoyment of life due to a shortened life expectancy are not recoverable.

Summary of Bill:

A number of changes are made to both of the wrongful death statutes and to the general survival statute, particularly in the areas of the beneficiaries of these actions and the damages that are

recoverable. These changes apply to all claims that are not time barred, or that are pending in court, on the effective date of the act.

General Wrongful Death Statute: The general wrongful death statute is amended to specifically state that both economic and non-economic damages suffered by the beneficiaries are recoverable in such amounts as determined by a jury to be just.

In addition, this statute is amended to remove the dependency and residency requirements for the secondary beneficiaries. This allows a parent or sibling of the deceased to be a beneficiary of the action, if there is no spouse or child, without having to show dependence on the deceased and regardless of whether the parent or sibling resides in the United States.

Child Death Statute: The child death statute is amended to remove the requirement that a parent of a minor child have regularly contributed to the minor child's support and to remove the requirement that the parent of an adult child must have been dependent on the adult child for support. Instead, a parent of a minor or adult child may recover if the parent has had significant involvement in the child's life, including giving or receiving emotional, psychological, or financial support.

The recoverable damages are amended to specifically include "loss of the child's emotional support" as an element of damages. The statute is also amended to provide that each parent is entitled to a separate recovery regardless of marital status.

Special Survival Statute: The special survival statute is amended to specifically provide that economic damages and non-economic damages may be recovered. Non-economic damages are specifically listed and include damages for the decedent's loss of life itself, loss of enjoyment of life, and shortened life expectancy.

The financial dependency and residency requirements for the secondary beneficiaries are removed. In addition, the statute is amended to provide that the action may be brought by the personal representative, rather than the executor or administrator.

Appropriation: None.

Fiscal Note: Not requested.

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