

2ESSB 6508 - H AMD 1599

By Representative Pedersen

ADOPTED 3/10/2010

1  
2 Strike everything after the enacting clause and insert the  
3 following:

4  
5 "Sec. 1. RCW 4.20.010 and 1917 c 123 s 1 are each amended to read  
6 as follows:

7 (1) When the death of a person is caused by the wrongful act,  
8 neglect or default of another his personal representative may maintain  
9 an action for damages against the person causing the death; and  
10 although the death shall have been caused under such circumstances as  
11 amount, in law, to a felony.

12 (2) The liability of a governmental entity in an action under this  
13 section that is based on a parent's significant involvement in an  
14 adult child's life is limited to situations where the governmental  
15 entity's acts or omissions are negligent and are a proximate cause of  
16 the death of the claimant, and where the governmental entity is not  
17 otherwise immune or where the governmental entity's liability is not  
18 otherwise limited by statute or case law.

19 (3) For the purposes of this section, "governmental entity" means  
20 the state, local agencies, political subdivisions, and any officers,  
21 employees, or agents of the state, local agencies, or political  
22 subdivisions.

23  
24 Sec. 2. RCW 4.20.020 and 2007 c 156 s 29 are each amended to read  
25 as follows:

26 (1) Every ((such)) action under RCW 4.20.010 shall be for the  
27 benefit of the ((wife, husband)) spouse, state registered domestic  
partner, ((child)) or children, including stepchildren, of the person

1 whose death shall have been so caused. If there (~~(be)~~) is no (~~(wife,~~  
2 ~~husband)~~) spouse, state registered domestic partner, or (~~(such)~~) child  
3 (~~(or children, such)~~), the action may be maintained for the benefit  
4 of:

5 (a) The parents(~~(, sisters, or brothers, who may be dependent upon~~  
6 ~~the deceased person for support, and who are resident within the~~  
7 ~~United States at the time of his death)~~) of a deceased adult child if  
8 the parents are financially dependent upon the adult child for support  
9 or if the parents have had significant involvement in the adult  
10 child's life; or

11 (b) Sisters or brothers who are financially dependent upon the  
12 decedent for support if there is no spouse, state registered domestic  
13 partner, child, or parent.

14 In every such action the jury may (~~(give such)~~) award economic and  
15 noneconomic damages as(~~(7)~~) under all circumstances of the case(~~(7)~~)  
16 may to them seem just. In an action under RCW 4.20.010 that is based  
17 on a parent's significant involvement in an adult child's life,  
18 economic damages include any student loan balance that the parent may  
19 be obligated to repay as a result of acting as a cosigner or guarantor  
20 on the decedent's student loans, except for student loan balances  
21 that, under the terms of the loan, are eligible for a complete  
22 discharge upon the death of the borrower.

23 (2) For the purposes of this section:

24 (a) "Financially dependent for support" means substantial  
25 dependence based on the receipt of services that have an economic or  
26 monetary value, or substantial dependence based on actual monetary  
27 payments or contributions; and

28 (b) "Significant involvement" means demonstrated support of an  
29 emotional, psychological, or financial nature within the relationship,  
30 at or reasonably near the time of death, or at or reasonably near the  
31 time of the incident causing death. When determining if the parents  
32 have had significant involvement in the adult child's life, the court  
33 shall consider, but not be limited to, objective evidence of personal,  
34 verbal, written, or electronic contact with the adult child, and in-

1 person interaction with the adult child during holidays, birthdays,  
2 and other events.

3  
4 **Sec. 3.** RCW 4.20.046 and 2008 c 6 s 409 are each amended to read  
5 as follows:

6 (1) All causes of action by a person or persons against another  
7 person or persons shall survive to the personal representatives of the  
8 former and against the personal representatives of the latter, whether  
9 ~~((such))~~ the actions arise on contract or otherwise, and whether or  
10 not ~~((such))~~ the actions would have survived at the common law or  
11 prior to the date of enactment of this section(~~(:—PROVIDED, HOWEVER,~~  
12 ~~That))~~).

13 (2) In addition to recovering economic losses for the estate, the  
14 personal representative ~~((shall only be))~~ is entitled to recover on  
15 behalf of those beneficiaries identified under RCW 4.20.060 any  
16 noneconomic damages for pain and suffering, anxiety, emotional  
17 distress, or humiliation personal to and suffered by ~~((a))~~ the  
18 deceased ~~((on behalf of those beneficiaries enumerated in RCW~~  
19 ~~4.20.020, and))~~ in such amounts as determined by a jury to be just  
20 under all the circumstances of the case. Damages under this section  
21 are recoverable regardless of whether or not the death was occasioned  
22 by the injury that is the basis for the action.

23 (3) The liability of property of spouses or domestic partners held  
24 by them as community property and subject to execution in satisfaction  
25 of a claim enforceable against such property so held shall not be  
26 affected by the death of either or both spouses or either or both  
27 domestic partners; and a cause of action shall remain an asset as  
28 though both claiming spouses or both claiming domestic partners  
29 continued to live despite the death of either or both claiming spouses  
30 or both claiming domestic partners.

31 ~~((+2))~~ (4) Where death or an injury to person or property,  
32 resulting from a wrongful act, neglect or default, occurs  
33 simultaneously with or after the death of a person who would have been  
34 liable therefor if his or her death had not occurred simultaneously

1 with such death or injury or had not intervened between the wrongful  
2 act, neglect or default and the resulting death or injury, an action  
3 to recover damages for such death or injury may be maintained against  
4 the personal representative of such person.

5  
6 **Sec. 4.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to read  
7 as follows:

8 (1) No action for a personal injury to any person occasioning  
9 death shall abate, nor shall ~~((such))~~ the right of action  
10 ~~((determine))~~ terminate, by reason of ~~((such))~~ the death~~((r))~~ if  
11 ~~((such))~~ the person has a surviving ~~((spouse, state registered~~  
12 ~~domestic partner, or child living, including stepchildren, or leaving~~  
13 ~~no surviving spouse, state registered domestic partner, or such~~  
14 ~~children, if there is dependent upon the deceased for support and~~  
15 ~~resident within the United States at the time of decedent's death,~~  
16 ~~parents, sisters, or brothers; but such action may be prosecuted, or~~  
17 ~~commenced and prosecuted, by the executor or administrator))~~  
18 beneficiary in whose favor the action may be brought under subsection  
19 (2) of this section.

20 (2) An action under this section shall be brought by the personal  
21 representative of the deceased~~((r))~~ in favor of ~~((such))~~ the surviving  
22 spouse or state registered domestic partner~~((, or in favor of the~~  
23 ~~surviving spouse or state registered domestic partner))~~ and ~~((such))~~  
24 children~~((, or if))~~. If there is no surviving spouse ~~((or))~~, state  
25 registered domestic partner, ~~((in favor of such child))~~ or children,  
26 ~~((or if no surviving spouse, state registered domestic partner, or~~  
27 ~~such child or children, then))~~ the action shall be brought in favor of  
28 the decedent's:

29 (a) Parents~~((, sisters, or brothers who may be dependent upon such~~  
30 ~~person for support, and resident in the United States at the time of~~  
31 ~~decedent's death))~~ if the parents are financially dependent upon the  
32 decedent for support or if the parents have had significant  
33 involvement in the decedent's life; or

34 (b) Sisters or brothers who are financially dependent upon the

1 decedent for support if there is no spouse, state registered domestic  
2 partner, child, or parent.

3 (3) In addition to recovering economic losses, the persons  
4 identified in subsection (2) of this section are entitled to recover  
5 any noneconomic damages personal to and suffered by the decedent  
6 including, but not limited to, damages for the decedent's pain and  
7 suffering, anxiety, emotional distress, or humiliation, in such  
8 amounts as determined by a jury to be just under all the circumstances  
9 of the case.

10 (4) For the purposes of this section:

11 (a) "Financially dependent for support" means substantial  
12 dependence based on the receipt of services that have an economic or  
13 monetary value, or substantial dependence based on actual monetary  
14 payments or contributions; and

15 (b) "Significant involvement" means demonstrated support of an  
16 emotional, psychological, or financial nature within the relationship,  
17 at or reasonably near the time of death, or at or reasonably near the  
18 time of the incident causing death. When determining if the parents  
19 have had significant involvement in the child's life, the court shall  
20 consider, but not be limited to, objective evidence of personal,  
21 verbal, written, or electronic contact with the child, and in-person  
22 interaction with the child during holidays, birthdays, and other  
23 events.

24  
25 **Sec. 5.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read  
26 as follows:

27 (1) A ((~~mother or father, or both,~~) parent who has regularly  
28 contributed to the support of his or her minor child, ((~~and the mother~~  
29 or father, or both, of a child on whom either, or both, are)) or a  
30 parent who is financially dependent on a minor child for support or  
31 who has had significant involvement in the minor child's life, may  
32 maintain or join ((~~as a party~~)) an action as plaintiff for the injury  
33 or death of the child.

1       (2) Each parent, separately from the other parent, is entitled to  
2 recover for his or her own loss regardless of marital status, even  
3 though this section creates only one cause of action((, but if the  
4 parents of the child are not married, are separated, or not married to  
5 each other damages may be awarded to each plaintiff separately, as the  
6 trier of fact finds just and equitable)).

7       (3) If one parent brings an action under this section and the  
8 other parent is not named as a plaintiff, notice of the institution of  
9 the suit, together with a copy of the complaint, shall be served upon  
10 the other parent: PROVIDED, That notice shall be required only if  
11 parentage has been duly established.

12       Such notice shall be in compliance with the statutory requirements  
13 for a summons. Such notice shall state that the other parent must  
14 join as a party to the suit within twenty days or the right to recover  
15 damages under this section shall be barred. Failure of the other  
16 parent to timely appear shall bar such parent's action to recover any  
17 part of an award made to the party instituting the suit.

18       (4) In ((such)) an action under this section, in addition to  
19 damages for medical, hospital, medication expenses, and loss of  
20 services and support, damages may be recovered for the loss of love  
21 and companionship of the child and for injury to or destruction of the  
22 parent-child relationship in such amount as, under all the  
23 circumstances of the case, may be just.

24       (5) For the purposes of this section:

25       (a) "Financially dependent for support" means substantial  
26 dependence based on the receipt of services that have an economic or  
27 monetary value, or substantial dependence based on actual monetary  
28 payments or contributions; and

29       (b) "Significant involvement" means demonstrated support of an  
30 emotional, psychological, or financial nature within the relationship,  
31 at or reasonably near the time of death, or at or reasonably near the  
32 time of the incident causing death. When determining if the parents  
33 have had significant involvement in the child's life, the court shall  
34 consider, but not be limited to, objective evidence of personal,

1 verbal, written, or electronic contact with the child, and in-person  
2 interaction with the child during holidays, birthdays, and other  
3 events.

4  
5 NEW SECTION. **Sec. 6.** This act applies to all causes of action  
6 that are based on deaths occurring on or after the effective date of  
7 this act.

8  
9 NEW SECTION. **Sec. 7.** (1) On December 1, 2011, and every December  
10 1st thereafter, the risk management division within the office of  
11 financial management shall report to the house of representatives ways  
12 and means committee, the house of representatives judiciary committee,  
13 the senate ways and means committee, and the senate government  
14 operations and elections committee, or successor committees, on the  
15 incidents covered by this act that involve state agencies.

16 (2) On December 1, 2011, and every December 1st thereafter, each  
17 local government risk pool or local government risk management  
18 division, or the equivalent in local governments, shall report to the  
19 legislative body of the local government on the incidents covered by  
20 this act that involve the local government.

21 (3) This section expires December 2, 2016.

22  
23 NEW SECTION. **Sec. 8.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected."

27  
28 Correct the title.

29  
**EFFECT:** The striking amendment, as compared to the underlying  
bill, makes the following changes:  
• Removes the provisions that eliminate the joint and several  
liability of the state and its political subdivisions in  
actions based on a parent's significant involvement in a  
child's life.

- Provides that the liability of a governmental entity in a wrongful death action that is based on a parent's significant involvement in a child's life is limited to situations where the entity's acts or omissions are negligent and a proximate cause of the death of the claimant, and where the entity is not otherwise immune or where the entity's liability is not otherwise limited by statute or case law.
- Requires the court, when determining whether a parent had significant involvement in a child's life, to consider objective evidence of personal, verbal, written, or electronic contact with the child and in-person interaction with the child during holidays, birthdays, and other events.
- Provides that in a wrongful death action based on a parent's significant involvement in a child's life, the parent may recover for the decedent's student loan balances for which the parent is obligated as a cosignor or guarantor, except loan balances that are eligible for a complete discharge upon the death of the borrower.
- Provides that the act applies to actions that are based on deaths occurring on or after the effective date of the act.
- Makes other clarifying and technical amendments.

As compared to the version of the bill as previously passed the House (H-5513.E), the striking amendment:

- Removes the provisions creating the Local Government Liability Reimbursement Account (Account) to reimburse liability and defense costs incurred by local governments as a result of the act, and removes the temporary surcharges on traffic infractions and superior court civil filing fees that funded this Account.
- Adds a section stating that the liability of a governmental entity in a wrongful death action that is based on a parent's significant involvement in a child's life is limited to situations where the entity's acts or omissions are negligent and a proximate cause of the death of the claimant, and where the entity is not otherwise immune or where the entity's liability is not otherwise limited by statute or case law.

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