

# HOUSE BILL REPORT

## HB 2262

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**As Reported by House Committee On:**  
Judiciary  
Appropriations

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

**Brief Description:** Concerning actions for wrongful injury or death.

**Sponsors:** Representatives Santos, Goodman, Johnson, McBride, Sawyer, Fitzgibbon, Dolan, Orwall, Macri, Frame, Jenkins, Ormsby and Pellicciotti.

**Brief History:**

**Committee Activity:**

Judiciary: 1/11/18, 2/1/18 [DPS];

Appropriations: 2/5/18, 2/6/18 [DP2S(w/o sub JUDI)].

**Brief Summary of Second Substitute Bill**

- Makes a number of changes to statutes governing wrongful death and survival causes of action, including changes to the beneficiaries entitled to recoveries and the damages that may be recovered under these actions.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jenkins, Chair; Goodman, Hansen, Kirby, Orwall, Shea and Valdez.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Graves, Assistant Ranking Minority Member; Haler, Klippert and Muri.

**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

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*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.*

actions through five interrelated statutes that create four types of wrongful death and survival actions: (1) general wrongful death; (2) wrongful death of a child; (3) general survival; and (4) special survival.

Wrongful death actions 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 actions 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 Action.

Under a general wrongful death action, the personal representative of the decedent may bring a cause of action on behalf of specified beneficiaries for damages they 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 are recoverable. "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, society, and consortium.

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

#### Wrongful Death of a Child Action.

The wrongful death of a child 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 for an adult child if the parent was substantially dependent on the child for support.

The statute lists the following recoverable damages: medical, hospital, and medication expenses; loss of the child's services and 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 Action.

Under the general survival statutes, any cause of action that the decedent could have brought prior to death may be brought by the decedent's personal representative and is for the benefit of, and passes through, the decedent's estate.

The recoverable damages for the estate are the pecuniary losses to the estate such as loss of earnings, medical and hospital expenses, and funeral and burial expenses. In addition, the personal representative may recover, on behalf of the same beneficiaries listed under the

general wrongful death statute, damages for the pain and suffering, anxiety, emotional distress, and humiliation personal to, and suffered by, the decedent. Under case law, post-death damages for the decedent's loss of enjoyment of life or shortened life expectancy are not recoverable.

#### Special Survival Action.

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, the statutorily-defined beneficiaries. As in a general wrongful death action, there are two tiers of beneficiaries. The primary beneficiaries are the spouse or domestic partner 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.

Recoverable damages under a special survival action are not specified in statute. 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. Post-death damages for the decedent's loss of enjoyment of life or shortened life expectancy are not recoverable.

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#### **Summary of Substitute Bill:**

A number of changes are made to the statutes governing wrongful death and survival actions, including changes to the beneficiaries entitled to recoveries and the damages available under these actions. In addition, the language of these statutes is updated and restructured.

The act is designated as remedial and applies retroactively to all claims that are not time barred, as well as any claims pending in any court on applies the effective date of the act.

#### General Wrongful Death Action.

*Beneficiaries.* The dependence and residency requirements for secondary beneficiaries (parents and siblings) are removed. A parent or sibling may be a beneficiary of the action if there is no spouse, domestic partner, or child, without having to show dependence on the deceased and regardless of whether the parent or sibling resided in the United States at the time of the person's death.

*Damages.* A specific statement is added that both economic and noneconomic damages are recoverable against the person causing the death in such amounts as the jury determines to be just under the circumstances of the case.

#### Wrongful Death of a Child Action.

*Beneficiaries.* Legal guardians are authorized to bring an action for wrongful death of a child. A parent or legal guardian may bring an action for the death of an adult child if the parent or legal guardian has had significant involvement in the child's life. "Significant involvement" means demonstrated support of an emotional, psychological, or financial nature within the parent-child relationship at or reasonably near the time of death, or at or

reasonably near the time of the incident causing the death, including either giving or receiving emotional, psychological, or financial support to or from the child.

A parent or legal guardian may maintain an action for wrongful death of a child only if the child has no spouse, domestic partner, or children, regardless of whether or not the child has attained the age of majority. Each parent is entitled to recover for his or her own loss separately from the other parent regardless of marital status.

*Damages.* The recoverable damages are revised to specifically include "other economic losses" beyond those listed, as well as loss of the child's emotional support.

#### General Survival Action.

*Beneficiaries.* The dependence and residency requirements for secondary beneficiaries (parents and siblings) are removed. A parent or sibling may be a beneficiary of the action if there is no spouse, domestic partner, or child, without having to show dependence on the deceased and regardless of whether the parent or sibling resided in the United States at the time of the person's death.

*Damages.* Language governing recoverable damages is reorganized, and a specific statement is added regarding the estate's ability to recover economic losses.

#### Special Survival Action.

In a survival action, the personal representative is designated as entitled to bring the action, rather than the executor or administrator.

*Beneficiaries.* The dependence and residency requirements for secondary beneficiaries (parents and siblings) are removed. A parent or sibling may be a beneficiary of the action if there is no spouse, domestic partner, or child, without having to show dependence on the deceased and regardless of whether the parent or sibling resided in the United States at the time of the person's death.

*Damages.* The damages that may be recovered in a special survival action are specified. In addition to recovering the decedent's economic losses, noneconomic damages personal to the decedent may be recovered in such amounts as determined by the jury to be just under the circumstances of the case. Noneconomic damages include, but are not limited to, damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation.

There is no double recovery created or allowed for the same damages to a person under the wrongful death and survival actions.

#### **Substitute Bill Compared to Original Bill:**

The original bill allowed damages for loss of life itself, loss of enjoyment of life, and shortened life expectancy under a special survival action and provided that a parent or legal guardian could maintain an action for wrongful death of a minor child if the parent or guardian had significant involvement in the child's life (rather than had regularly contributed to the child's support). The original bill did not specifically provide that no double recovery

for the same damages for a person is created or allowed under the wrongful death and survival actions.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill is prompted by the Ride the Ducks crash that killed many students visiting from foreign countries. The bill fixes two discriminatory parts of the law that were brought to light from that crash. First, the law bars nonresident parents from seeking justice on behalf of a child. This restriction was enacted 100 years ago amid the xenophobic attitudes of the time. In the Ride the Ducks crash, a young woman from South Korea was severely injured and her family arrived in time to see their broken daughter for a few days before she ultimately died. The experience she and her parents had for those three days does not count under the law. This is unfair, and it needs to be corrected.

The second unfairness in the law is that once a child turns 18 years old, parents are unable to seek redress for loss of the child. There is no time limitation or other restriction on a parent's love for a child. The loss of not seeing a child grow, marry, and have children of their own is devastating. A young man, aged 19, was killed on his second day at work when the employer put him in a dangerous situation with no training or safety gear. The parents have no rights to seek justice and legally hold the company accountable. Another young man was wrongfully killed in an apartment fire due to unsafe premises, and there were no penalties or accountability for the landlord for the confusion, terror, and pain he suffered.

Children mean everything to their parents, and there is no worse time in a parent's life than losing a child. A young woman, aged 22, died through the negligence of a bus driver. She was not married and had no kids, so there is no recourse under the law for the loss her parents suffered. A woman who was a loving sister and daughter died due to lack of proper care at a hospital, and no one has the right to hold the hospital accountable because she was not married and could not have children, and her mother could not establish dependence. A person's life is not any less valuable just because the person has no spouse or children.

The law also discriminates against people with developmental disabilities. Their lives have no value under the law because no one is dependent on them and they do not have jobs or spouses. The state finally needs to recognize the value and worth of people with developmental disabilities.

Washington law does not treat families fairly or with respect, and that needs to change. The Legislature is being asked to weigh claims of entities that are legally responsible for a

person's death against the parents and families that have suffered the worst kind of loss. It is time to tip the balance in favor of families.

(Opposed) It is noteworthy that the bill contains more than what you have heard from the proponents. This is a complex area of law, and many changes are being made. The expanded damages in the bill represent a gross and significant expansion of the law and would put Washington at odds with virtually every other state. The change would allow the estate itself to recover loss of enjoyment of life damages, which means that the jury would be asked to value human life. Governmental entities are already a deep pocket with joint and several liability, and this provision significantly magnifies the potential award. Governmental entities will be on the hook even when they have been found only 1 percent at fault.

The bill is overly broad and will result in more lawsuits. This causes concerns about liability exposure for health care providers, which could have a significant effect on the health care marketplace. The current law has provided stability in the health care market. This bill could create some of the same problems that the Legislature has had to address in previous years. Health care providers are leaving their practices in droves, and this broader liability will only exacerbate this problem.

It is clear from the fiscal note that the bill will result in increased costs for local governments. Counties are agencies that work on behalf of the state to engage in inherently risky activities. Washington has adopted a very broad waiver of sovereign immunity for the state and local governments. Washington has no cap on noneconomic damages, joint and several liability, and a broad range of recoverable damages. Look at the entire picture and the potential impacts of this legislation on local government partners since they engage in these activities on behalf of the state.

**Persons Testifying:** (In support) Representative Santos, prime sponsor; Deanna Hogue; Alan Hogue; Gerry Gibson; Bonnie Gibson; Andrew Ackley, Washington State Association for Justice; Kara Caicedo; Jeff Chale; Larry Shannon, Washington State Association for Justice; and Diana Stadden, The Arc of Washington State.

(Opposed) Bob Christie, Washington Defense Trial Lawyers; Katie Kolan and Lisa Thatcher, Washington State Medical Association; Brian Enslow, Washington State Association of Counties; and Logan Bahr, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 17 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Stanford, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Haler, Manweller, Schmick, Taylor, Vick and Volz.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives MacEwen, Assistant Ranking Minority Member; Harris.

**Staff:** Meghan Morris (786-7119).

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

The clause making the act retroactive to claims pending in any court on the effective date of the act is removed. Instead, the act applies prospectively only to all actions that are commenced on or after the effective date of the act.

Recoverable damages under a special survival action are limited to damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation. Under the substitute bill, recoverable damages under a special survival action include, but are not limited to, pain and suffering, anxiety, emotional distress, or humiliation.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Changes to the wrongful death provisions are past due. This bill does two things. First, the bill eliminates the nonresident bar that was brought to the front after the terrible tragedy and horrific crash between the Ride the Ducks vehicle and the tour bus carrying exchange students. Washington is the only state in the union that has that bar, which goes back to 1907 during some of the worst days of legislation and prejudiced times of our nation. Secondly, the bill deals with a big issue for parents. Under current law on the day a child turns 18 years old, the loss and value of that child is no longer recognized for their family. That is wrong and it needs to be rectified.

This legislation is not just so parents can get money for their children. Families do what they can to create legacies for their late children, such as create scholarships, educational campaigns, and safety fairs. While there are fiscal costs of this legislation, there are immeasurable costs to families who lose their loved ones. This is about treating families equally under the law, holding those responsible accountable, and seeking justice. The wrongful death laws are outdated and discriminatory and need to be changed. Some family's only recourse is funeral expenses. The current laws protect wrongdoers and take away the rights of grieving families. It is not right or justified that regular people are left out, while there are shields for larger entities such as hospitals, governments, slumlords, private

employers, and nongovernmental entities. There are many wrongful deaths aside from within governments. There are many other ways to save money and prevent fiscal impacts, such as implementing safety rules and requirements to prevent deaths. If you can save a life, it is worth it. Our state recognizes the loss of loved ones if they are minors, but discriminates against other families. Another factor is that a parent has to be dependent on the adult child in current law, and that does not happen in most cases, especially for people with developmental disabilities. People with disabilities have value. It is time to recognize this grave injustice.

There have been many amendments to tighten the damage language and decrease the fiscal impacts. This language is not expanding current damages, but ensures that beneficiaries who have been denied justice can come forward and have their day in court. The effective date issue is unusual and can be changed. This bill balances existing law, which protects wrongdoers responsible for the death of someone else's child, against the rights of parents who suffer the ultimate loss. The law has always protected those wrongdoers.

(Opposed) The fiscal note estimates a 20 percent increase in claims and costs associated with the expansion of damages, application of retroactivity, and the overturning of two standing Supreme Court cases involving the wrongful death of an adult child. A 20 percent increase could be on the low end with the retroactive aspect of the bill. The cost increases translate to local governments as well, which have similar liabilities. There are significant concerns about the combined effect of these impacts on defendants of all sorts.

Many counties have not recovered from the recession and are at revenue levels close to those of 2008. For comparison, the State Near General Fund has increased by nearly 40 percent since that time. Local governments cannot absorb these costs and any costs pushed down will impact public health, public safety, human services, and all the services local governments provide on behalf of the Legislature.

Washington tort liability is unique relative to other states due to many factors, including the waiver of sovereign immunity, the application of joint and several liability, and a lack of caps on damages. Any possible expansion of damages and claims must consider Washington's unique status in the nation. In cases where governments are sued, joint and several liability says that because of the 1 percent responsibility, governments may be held liable for 100 percent of the damages if the codefendants cannot pay those damages.

The wrongful death and survival statutes of statutory creation and are not created by courts. Thus, it is up to the Legislature to find the right balance. In 2008 there was a bill similar to this one and a study that found the increase in claim frequency could be 29 percent or upward depending on the kind of claims.

**Persons Testifying:** (In support) Diana Stadden, The Arc of Washington; David Lord, Disability Rights Washington; Gerry Gibson; Bonnie Gibson; Jeff Chale; Deanna Hogue; and Larry Shannon, Washington State Association for Justice.

(Opposed) Brian Enslow, Washington State Association of Counties; Logan Bahr, Association of Washington Cities; Cliff Webster, Liability Reform Coalition; and Mel Sorensen, Washington Defense Trial Lawyers.



**Persons Signed In To Testify But Not Testifying: None.**