

HOUSE BILL REPORT

2SSB 6015

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: Senate Committee on Ways & Means (originally sponsored by Senators Hasegawa, Rolfes, Frockt, Pedersen, Hunt, Nelson, Darneille, Miloscia, Chase, Saldaña and Kuderer).

Brief History:

Committee Activity:

Judiciary: 2/21/18, 2/22/18 [DP];

Appropriations: 2/24/18, 2/26/18 [DP].

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.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 8 members: Representatives Jenkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Orwall, Shea and Valdez.

Minority Report: Do not pass. Signed by 5 members: Representatives Rodne, Ranking Minority Member; 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 actions through five interrelated statutes that create four types of wrongful death and survival

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: (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.

Summary of 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 applies prospectively only to claims that are commenced on or after 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 special 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 damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill addresses a discriminatory provision in the law that goes back to the early 1900s. There were many immigrant workers in the state and a residency requirement was adopted so companies would not have to pay damages when there was a workplace injury. The bill addresses the tragic Ride the Ducks crash that resulted in the deaths of young people from other countries. Their relatives are denied standing to bring an action to recover for the loss of their family members. This is wrong and needs to be changed.

There was a tragic case where a father, his wife, and child were killed through the fault of a contractor when a concrete barrier from an overpass crushed their vehicle. This was a shocking and preventable tragedy, but the contractor only had to pay some small fines and was able to continue doing business. The lives of the family were turned upside down, but they had no legal rights to seek justice under the current law. In another tragic case, a young man suffering from severe mental health issues was turned away from treatment that he severely needed. The designated mental health professional said he needed tough love, and they gave him a bus ticket and released him; he took his life shortly after leaving the facility. The enormity of the emotional and financial impact of this experience cannot be described, but there was no recourse for the family to seek justice for their loss.

This bill is important for people with developmental disabilities because no one is dependent on them. Just because people with developmental disabilities are unable to contribute financially does not mean they do not have value. They provide other value to their family members, and those family members would be emotionally affected by their loss.

(Opposed) Health care providers have concerns about how the bill will effect malpractice insurance. Many providers are already dealing with fiscal constraints, and this bill will be an additional hit that puts their practices in jeopardy. The bill contains a gross expansion of the damages available in a survival action. It would allow hedonic damages, which would require juries to put a value on life. It also eliminates the dependence requirement for secondary beneficiaries. These changes will have a significant impact on hospitals, especially rural hospitals. Hospitals are the deep pocket because they have the largest insurance policies. Because of joint and several liability they can be required to pay 100 percent of the damages when they were only one percent at fault.

Local governments have a unique set of duties that they have to fulfill. They do not have the option of not responding to public safety issues. They do not have the option of not creating local infrastructure. The expansion of these actions creates a financial concern because of joint and several liability. Establishing a proportional liability standard would serve the function of providing justice while not creating such a burden for local jurisdictions.

Persons Testifying: (In support) Senator Hasegawa, prime sponsor; Larry Shannon, Washington State Association for Justice; Wayne Ellis; Rhonda Ellis; Diana Stadden, The Arc of Washington State; Ivanova Smith, Self Advocates in Leadership; and Lorena McPhail, National Alliance of Mental Illness.

(Opposed) Roman Daniels-Brown and Cliff Webster, Washington State Medical Association; Erin Seeberger, Washington Defense Trial Lawyers Association; and Brian Enslow and Logan Bahr, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 18 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Cody, Fitzgibbon, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, 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 3 members: Representatives MacEwen, Assistant Ranking Minority Member; Bergquist and Wilcox.

Staff: Meghan Morris (786-7119).

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

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: 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 about righting a historic wrong. Washington is the only state that does not recognize the loss of a child for a nonresident parent. Additionally, a child is not loved any less when they turn 18, and the law should recognize their loss. This was highlighted in the Ride the Ducks tragedy where five young people lost their lives in our country. The cruel irony in that situation is that families of the young people that were injured in that accident do have a cause of action, but the families who suffered the ultimate loss do not have a cause of action.

Nobody knows the true cost of this bill. The fiscal note assumes a 20 percent increase in claims, which would be about 15 to 18 new cases per year. When that is averaged out, maybe one case is within local government, maybe two or three will cost the state, but most of the cases will be automobile and miscellaneous cases. Money is tight, but the costs of the premiums are a small price to pay to give recognition and justice to these parents. Washington has always weighted the balance of the rights of parents who have suffered the ultimate loss against the wrongdoers, who in essence get a free pass under current law. This bill gives the Legislature the opportunity to change that balance. Many families suffer while the wrongdoers are rewarded.

The wrongful death laws are outdated and discriminatory and need to be changed. Families do what they can to create legacies for their late children, such as create scholarships, promote educational campaigns, and make donations to charity. While there are fiscal costs of this legislation, there are immeasurable costs to families who suffer the ultimate loss. This is about treating families equally under the law, holding those responsible accountable, and seeking justice. The current laws protect wrongdoers and take away the rights of grieving families. There are many wrongful deaths aside from within governments. Our state recognizes the loss of loved ones if they are minors, but discriminates against other families. There need to be ramifications for people in the wrong to incentivize other people to be more cautious.

(Opposed) The fiscal note only reflects public sector interests, but the private sector impact will be substantial. The consequences of this bill go beyond the fiscal impact. For example, in the medical industry a physician has a property interest in his or her license, which could be suspended or revoked. This will exacerbate a physician shortage. Physicians may leave practice early or not take on complex or complicated treatments.

This is a substantial expansion in damages and this bill overturns two well-settled Supreme Court cases dealing with wrongful death. It is important to be aware of Washington's application of joint and several liability. A defendant with a small portion of the liability may bear 100 percent of the financial consequence of an action. This particularly falls on state and local governments, hospitals, and other institutional defendants.

Local governments have a unique set of risks and responsibilities. It is difficult to get an accurate estimate of the impact on local governments because there are a myriad of local government risk pools. There should be amendments that limit joint and several liability for this new class of claimants. These people have suffered immense tragedies and deserve justice, but liability should be limited to proportional liability.

This bill is not identical to House Bill 2262 as previously heard by the committee because it does not explicitly prohibit double recovery and does not clarify the available damages.

Persons Testifying: (In support) Larry Shannon, Washington State Association for Justice; Gerry Gibson; Jeff Chale; Dolly Chale; Deanna Hogue; and Bonnie Gibson.

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

Persons Signed In To Testify But Not Testifying: None.