

---

## Judiciary Committee

---

### ESHB 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, or a survival action.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Ormsby, Haler, Pedersen, Wood, VanDeWege, Campbell, Flannigan, Kessler, Williams and Lantz).

<p style="text-align: center;"><b>Brief Summary of Engrossed Substitute Bill</b></p> <ul style="list-style-type: none"><li>• Makes a number of changes to the statutes governing wrongful death and survival causes of action, particularly in the areas of the beneficiaries and recoverable damages.</li></ul>
--



**Hearing Date:** 2/1/08

**Staff:** Trudes Tango (786-7384).

**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 statutes relating to wrongful death and survival actions: (1) general wrongful death statute; (2) child death statute; (3) general survival statute; and (4) 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 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 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"

---

*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.*

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.

The wrongful death statute creates two tiers of beneficiaries. 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.

#### 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

Under the general survival statute, 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 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 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, the statutorily-defined beneficiaries. As in the general wrongful death statute, 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.

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. Under case law, post-death damages for the decedent's loss of enjoyment of life or shortened life expectancy are not recoverable.

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

A number of changes are made to the wrongful death and survival statutes, particularly in the areas of the beneficiaries of these actions and the damages that are recoverable. In addition, the language of these statutes is updated and restructured for clarity.

### **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 residency requirement for secondary beneficiaries and to allow a parent to recover as a secondary beneficiary for the wrongful death of a deceased child who had a developmental disability if the parent regularly contributed to the deceased child's support.

### **Child Death Statute**

The child death statute is amended to extend the cause of action to a parent who regularly contributed to the support of either an adult child who is under the age of 26 or a child who had a developmental disability, without requiring the parent to show that he or she was dependent on the child for support.

The child death statute is also amended to provide that each parent is entitled to a separate recovery regardless of marital status.

### **General Survival Statute**

The damages available in a general survival action are amended to specifically refer to economic losses, and to include the ability to recover for a decedent's "loss of enjoyment of life" and "shortened life expectancy." In addition, the current language stating that the damages must be "suffered by" the decedent is removed.

The residency requirement for secondary beneficiaries under the general survival statute is removed. In addition, a recovery may be obtained on behalf of a parent of a deceased child who had a developmental disability if the parent regularly contributed to the deceased child's support.

### **Special Survival Statute**

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

The statute is amended to remove the residency requirement for the secondary beneficiaries and to allow a parent to recover as a secondary beneficiary for a deceased child who had a developmental disability if the parent regularly contributed to the deceased child's support.

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:** Available.

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