

SENATE BILL REPORT

E3SHB 1873

As Reported By Senate Committee On:
Government Operations & Elections, February 26, 2008
Ways & Means, March 03, 2008

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 Appropriations (originally sponsored by Representatives Ormsby, Haler, Pedersen, Wood, VanDeWege, Campbell, Flannigan, Kessler, Williams and Lantz).

Brief History: Passed House: 2/15/08, 59-34.

Committee Activity: Government Operations & Elections: 2/26/08 [DP-WM].
Ways & Means: 3/3/08 [DPA, DNP, w/oRec].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Benton, Kline, McDermott and Pridemore.

Staff: Khalia Gibson (786-7460)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Fairley, Hatfield, Hobbs, Keiser, Kohl-Welles, Oemig, Rasmussen, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senators Carrell and Hewitt.

Minority Report: That it be referred without recommendation.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Honeyford, Parlette and Schoesler.

Staff: Steve Jones (786-7440)

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.

Background: Wrongful death is a civil claim against a party who may be held liable for the death of a person. Washington State provides for such actions through four interrelated statutes: the general wrongful death statute; the child death statute; the general survival statute; and the special survival statute. Wrongful death statutes provide a new cause of action on behalf of specified beneficiaries for damages suffered as a result of the decedent's death. Survival actions do not create a new cause of action, they simply allow for the continuation of any cause of action which the decedent could have maintained had the decedent lived.

General Wrongful Death Statute. When the death of a person is caused by the wrongful act, neglect, or default of another, the deceased's personal representative may maintain an action for damages against the person causing the death, even if the death was caused under circumstances which amount to a felony. The statute does not specify the type of damages that are recoverable, only that a jury may decide what damages seem just.

The wife, husband, state registered domestic partner, child or children, including stepchildren, of the deceased may be beneficiaries of a wrongful death claim. If none of the listed next of kin exist, the beneficiaries may be the deceased's parents, or brothers or sisters who were dependent upon the deceased person for support. The parents, and brothers or sisters must be residents of the United States at the time of the decedent's death.

Child Death Statute. A parent may 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 dependent on the adult child for support. 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. Recoverable damages include medical expenses, loss of services and support, and loss of love and companionship among additional damages.

General Survival Statute. Any cause of action that the decedent could have brought prior to death may be continued by the decedent's personal representative. An action under the general survival statute is brought by the decedent's personal representative and is for the benefit of the decedent's estate. The statute does not create a separate claim for the survivors, but merely preserves the decedent's cause of action.

Special Survival Statute. A cause of action exists 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 the statutorily defined beneficiaries. The statute does not specifically define recoverable damages.

The survival statutes only govern pre-death damages and do not create claims on behalf of the deceased for the loss of life itself. Additionally, the value of a person's shortened life expectancy is not a separately recoverable item of damages.

Summary of Bill: Changes are made to the wrongful death and survival statutes regarding beneficiaries and recoverable damages. The terms "financially dependent for support" and "significant involvement" are defined.

General Wrongful Death Statute. If the deceased has no spouse or children, the cause of action may be maintained for the benefit of the parents of a deceased adult child if the parents are financially dependent upon the deceased for support, or if the parents have had significant

involvement in the adult child's life. The action may also be maintained by the sole beneficiary of the decedent's life insurance who has had significant involvement in the decedent's life.

If none of the listed next of kin exist, the claim may be maintained for the benefit of sisters or brothers who are financially dependent upon the deceased person for support. There is no United States residency requirement. The jury may award both economic and non-economic damages.

Under the general wrongful death statute, joint and several liability does not apply to claims against the state and local agencies by the new beneficiaries under the act.

Child Death Statute. A parent who is financially dependent on a child for support or who has had significant involvement in the deceased child's life may maintain a cause of action for the injury or death of a child.

Each parent is entitled to recover separately from the other parent for his or her own loss regardless of marital status, even though only one cause of action is created.

General Survival Statute. In addition to recovering economic losses, the personal representative is entitled to recover damages on behalf of the statutorily defined beneficiaries. Such damages include claims for pain and suffering, anxiety, emotional distress, or humiliation personal to the deceased in such amounts as determined by a jury.

Special Survival Statute. An action for personal injury causing death must not terminate by reason of death if the person has a surviving beneficiary in whose favor the action may be brought. In addition to economic losses, beneficiaries are entitled to recover non-economic damages such as damages for the decedent's pain and suffering, anxiety, emotional distress, or humiliation. The amount of damages will be determined by the jury.

Under the special survival statute, joint and several liability does not apply to claims against state and local agencies by the new beneficiaries authorized under the act.

New Sections. The act applies to all causes of action filed on or after the effective date of this act.

Beginning on December 1, 2009, the risk management division within the Office of Financial Management must annually report to the appropriate committees of the Legislature on the state incidents covered by this act. The reports must continue until December 1, 2014. Local risk management pools are required to report to the local government regarding incidents that involve the local government.

The original version of the bill allowed for recovery under the general wrongful death statute for state registered domestic partners who have had significant involvement in the decedent's life if none of the primary kin listed in the statute exist.

Recovery was also allowed under the general and special survival statutes for grief, loss of enjoyment of life, and shortened or lost life expectancy. A reporting provision for local government was also added.

EFFECT OF RECOMMENDED AMENDMENT(S) (Ways & Means): Under the general wrongful death and special survival statutes, joint and several liability does not apply to claims against state and local agencies by the new beneficiaries authorized under the act.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Third Substitute Bill (Government Operations & Elections): PRO: The current law contains language dating back to 1909. There are gaps that need to be filled, and hopefully this bill will fill those gaps. The current law is unfair and discriminatory, and does not provide the same benefits, because it only provides for an economic loss to the child's estate. It is a slap in the face to have children reduced to estate status. There is no current ability for the families of single adult children to receive recourse for their death. This bill will ensure that the deceased children receive their constitutional right to a day in court. This law will help other families so they do not have to endure the same pain. There is no magic cutoff age where the pain subsides, the age of majority is arbitrary and family relationships have changed over time. Parents never imagine having to bury their children. The pain is exacerbated because someone else is responsible for the death of my child, and no one is held accountable. There is a disproportionate impact on families of children with disabilities, because people do not see it as a recognizable damage. Trial attorneys have not been there, it is the families that are affected who have lost children. The bill only impacts people who are responsible for the death of another human being, and but for their actions, the bill would not apply. This bill will give deceased children a voice, and we have waited a long time for the Legislature to recognize the substantial relationship between a parent and a child.

CON: We are sympathetic to the losses of families, but the bill creates an expansion of liability which places a burden on public entities. Tragic accidents addressed by this bill are infrequent, and currently risk management addresses them. The bill will increase liability by \$2 million to award non-economic damages. There is already legislation that addresses this issue, the bill merely expands possible remedies. The bill creates a change in family values, the deceased's spouse and children are first in line, this bill would change the order of priority. Surviving spouses and children would be forced to share with the deceased's parents. The fiscal note is misleading because the costs are not indeterminate, there would be approximately \$1.25 million in additional costs for damages. This bill will not prevent tragedies, it will only make it more expensive to the public and private sectors. Approximately 20 officers would be lost from patrol if this legislation were passed. Emergency response teams must act quickly and sometimes the outcome is unpredictable. Local emergency service agencies will be faced with increased financial liability. The definitions area needs more work, and more concrete direction needs to be set forth in this bill. A better way to approach this situation is to work through the process so the county is not the target of large lawsuits.

OTHER: We are focused on the costs to taxpayers. The Governor of New Jersey vetoed a similar bill, and reasoned that unlimited damages could have a significant impact on state and local governments. There should be a study of projected costs before implementing this legislation. There needs to be a better understanding of the impacts and costs in addition to mental suffering.

Persons Testifying (Government Operations & Elections): PRO: Representative Timm Ormsby, prime sponsor; Larry Shannon, Washington State Trial Lawyers; Edward Kitson, private citizen; Joyce Taylor, private citizen; David Lord, Disability Rights of Washington; Helen Sheets, private citizen.

CON: Bill Vogler, Washington State Association of Counties; Rene Tomisser, Office of the Attorney General; Don Anderson, Association of Washington Cities; Gerrit Ayers, Washington Defense Trial Lawyers; Dan Packer, Washington Fire Chiefs.

OTHER: Brandon Houskeeper, Washington Policy Center.

Staff Summary of Public Testimony on Engrossed Third Substitute Bill (Ways & Means): PRO: This bill is tightly drafted to deal with tragic circumstances where someone's actions lead to the death of another, and the current law does not recognize any claimants among the decedent's family members. The bill provides access to justice for families where justice was previously denied. This provides accountability in wrongful death cases. Forty-seven other states have similar statutes. Estimating the fiscal impact of this legislation is difficult. No new appropriation is required; the claims against the state will be paid from the state's Liability Account.

CON: This bill will have significant fiscal impact on state and local government and will severely affect the ability of public agencies to deliver services to taxpayers. Washington State has far greater liability exposure than other states because there are few limitations or caps on damage awards in Washington. Under joint and several liability, public agencies bear an excessive share of the liability costs. Insurance costs will increase for both the public and private sectors. Counties have limited resources, but the inherently hazardous nature of government services (parks, roads, correctional programs) creates significant liability exposure. With no upper age limit on claimants, this bill will expand both the number of beneficiaries as well as the size of the damages. Consultant studies demonstrate that the frequency of claims will also increase.

Persons Testifying (Ways & Means): PRO: Representative Timm Ormsby, prime sponsor; Larry Shannon, Washington State Trial Lawyers Association; Joyce Taylor, private citizen.

CON: Rene Tomisser, Office of the Attorney General; Rashi Gupta, Washington Association of Counties; Cliff Webster, Washington Liability Reform Coalition.