

SENATE BILL REPORT

2SSB 6015

As Passed Senate, February 9, 2018

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: Law & Justice: 1/18/18, 1/25/18 [DPS, w/oRec].

Ways & Means: 1/31/18, 2/06/18 [DP2S, DNP, w/oRec].

Floor Activity:

Passed Senate: 2/09/18, 26-21.

Brief Summary of Second Substitute Bill

- Removes the requirements that second tier beneficiaries—parents and siblings—reside in the U.S. at the time of the decedent's death and be dependent on the the decedent for financial support in order to recover in a wrongful death or survival action.
- Clarifies damages that may be recovered in wrongful death and survival causes of action.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6015 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

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.

Majority Report: That Second Substitute Senate Bill No. 6015 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Brown, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Bailey, Becker and Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Fain, Rivers, Wagoner and Warnick.

Staff: Julie Murray (786-7711)

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 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 Second 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 applies prospectively only and not retroactively. The act applies only to claims that are commenced on or after the effective date of the bill.

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. Standards for when a parent may bring an action for the death of a child are revised to remove the requirement that a parent must have regularly contributed to the support of a minor child or been dependent for support on an adult child.

Instead, a parent or legal guardian may bring an action if the parent or legal guardian has had significant involvement in the child's life, including either giving or receiving emotional, psychological, or financial support to or from the child. 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.

Each parent is entitled to recover for their 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. 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.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on First Substitute (Law & Justice): PRO: The purpose of this bill is to correct an historic injustice. In order to have standing for a wrongful death action, you have to be a resident of the United States. Before workers' compensation, Chinese workers were recruited to work here in risky jobs, including on the railroad and in canneries. Many lost their lives. When relatives sought recovery for wrongful death, the Legislature passed a law to prevent them from filing suit. The law originally limited standing to Washington residents and later expanded the statute to include U.S. residents. This law is discriminatory. Several international students were killed in the Ride the Duck accident. None of the families of those students had standing to recover under a wrongful death action. This is an important bill for international communities.

There are many examples of egregious actions by companies or medical providers. When the victim is an adult but is not married and does not have any children, no one can bring action to hold those companies or providers accountable. When you lose a parent, you lose a part of your past; when you lose a child, you lose a part of your future. Loss of consortium is a parent's greatest loss and the law currently treats parents as if they do not exist. Families should have equal rights under the law.

This bill removes the non-residency bar and creates an opening for a parent to bring wrongful death action. The expansion of damage provisions have been removed from the bill. This bill puts balance and fairness back where it should be. The worst thing that can happen to any parent is to suffer the loss of a child. The age of the child makes no difference to a parent's pain and should make no difference in seeking damages for wrongdoing.

CON: These changes will result in drastic increased exposure to defendants which includes governmental agencies. This bill represents an increased cost to taxpayers and private companies, Section 4, subsection (3) is of particular concern as it provides duplicative recovery that is already available in the general survival statute. Language allowing "any" noneconomic damage is also a concern.

Agents of the state do inherently risky things. This bill expands liability not only as to who is eligible, but the scope of remedies. Many counties are still at 2008 budget levels. With the waiver of sovereign immunity, this bill expands the class of plaintiffs for which a government entity is liable. This is not something local governments can afford. Local government might be agreeable if this change were coupled with an elimination of joint and several liability. The bill brings up legitimate questions about citizenship and local government would be happy to have conversations about addressing that issue.

This bill has an inordinate impact on the health care industry. In 2006, this Legislature passed several medical liability limitations. This has provided a stable paradigm for liability for the medical industry. This bill will upset that paradigm and result in unintended consequences such as causing physicians to leave private practice or practitioners avoiding

complicated cases that may result in liability. This bill extensively expands who can bring suit. This is a different conversation if the bill were just removing the U.S. citizenship provision. There is a legitimate policy question of whether you should be able to seek damages if you are not economically dependent on the child.

Persons Testifying (Law & Justice): PRO: Senator Bob Hasegawa, Prime Sponsor; Deanna Hogue, citizen; Joel Rosas, citizen; Jeff Chale, Washington State Association for Justice; Gerry Gibson, Washington State Association for Justice; Larry Shannon, Washington State Association for Justice; Rex Johnson, Washington Advocates for Patient Safety; Ming-Ming Tung-Edelman, Chinese American Citizens Alliance; Rhonda Niessen, citizen.

CON: Katie Kolan, Washington State Medical Association; Lisa Thatcher, Washington State Hospital Association; Thomas Miller, Washington Defense Trial Lawyers; Brian Enslow, Washington State Association of Counties; Logan Bahr, Association of Washington Cities.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Bill removes the residency requirement to ban the ability of foreign workers to recover for the wrongful loss of a family member. Remember the Ride the Ducks tragedy; the families of those international students were denied any standing to bring a lawsuit in Washington for their deaths. Bill corrects a historic injustice rooted in racism. Bill asks that you weigh the interests of those who have committed wrongful acts against parents who have suffered the ultimate loss. Bill restores fairness to the system. My son was killed in the workplace. Department of Labor & Industries found the business owners willfully and knowingly violated workplace safety laws. The company pled guilty to criminal charges for these violations and paid a fine. They lost a little money; we lost our son. Our son died in a fire in a slumlord rental with no smoke alarms, defective wiring and the escape window sealed shut. Limiting actions to those under the age of 18 who are U.S. residents rewards wrong-doers. Law does not treat all families equally. The doctor who killed my sister also killed 16 others, but we were unable to hold him accountable because the law will not allow our family to sue. Our daughter was killed when a tour bus collided head on with her vehicle. We have been able to do many things in her honor, but our family is not treated equally under the law. The outdated laws discriminate against us. Many businesses will speak of the cost to them from this bill, but there has been a huge cost to our family. We need to make people accountable for their actions, it allows us to seek justice, and it simply is the right thing to do. Most important thing is people with developmental disabilities are not valued; they may not have many people dependent upon them. However, we have families who are emotionally dependent upon us. The disabled are a minority group often forgotten and it would be a huge loss to my family were I to be lost. All people should be valued including those who are developmentally disabled. If one was killed negligently, they should be valued like others. Just because a person is not financially dependent on another, it does not mean they are not dependent on them in other ways.

CON: We are here to remind you that we are constitutionally created and perform many risky services to the public. County fiscal sustainability is difficult and we cannot absorb the impact from this bill. The bill could result in a decrease in services to the public. Joint and

several liability makes counties pay a disproportionate share of any loss. Tort liability that local governments face is unique in the country. Damage caps, several liability and other methods to limit liability do not apply in this state. The state fiscal note shows the state will have a 20 percent increase in claims and claim costs. We hope we make some progress on the bill. Property and casualty insurers oppose the bill for many of the reasons already noted. Bill makes sweeping changes to liability and damages and will result in costs to the state and would be applicable to private defendants as well. Believe the change in the damages portion are substantive changes with the inclusion of "but not limited to" language. A 2008 study by Milliman on similar legislation estimated claim frequency of claims would increase.

Persons Testifying (Ways & Means): PRO: Senator Bob Hasegawa, Prime Sponsor; Larry Shannon, Washington State Association for Justice; Deanna Hogue, citizen; Gerry Gibson, Washington State Association for Justice; Joel Rosas, citizen; Jeff Chale, Washington State Association for Justice; Ivanova Smith, Sail; Diana Stadden, The Arc Of Washington; Cheryl Monk, Self Advocates in Leadership.

CON: Logan Bahr, Association of Washington Cities; Brian Enslow, Washington State Association of Counties; Cliff Webster, Liability Reform Coalition; Mel Sorensen, Property Casualty Insurers Association of America.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.