

2SSB 6015 - S AMD 494

By Senator O'Ban

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1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 4.20.010 and 2011 c 336 s 89 are each amended to
4 read as follows:

5 (1) When the death of a person is caused by the wrongful act,
6 neglect, or default of another person, his or her personal
7 representative may maintain an action (~~((for damages))~~) against the
8 person causing the death(~~((; and although))~~) for damages sustained by
9 the beneficiaries listed in RCW 4.20.020 as a result of the
10 decedent's death.

11 (2) This section applies regardless of whether or not the death
12 ((shall have been)) was caused under such circumstances as amount, in
13 law, to a felony.

14 Sec. 2. RCW 4.20.020 and 2011 c 336 s 90 are each amended to
15 read as follows:

16 (1) Every (~~((such))~~) action under RCW 4.20.010 shall be for the
17 benefit of the (~~((wife, husband))~~) spouse, state registered domestic
18 partner, child or children, including stepchildren, of the person
19 whose death shall have been so caused.

20 (2) If there (~~((be))~~) is no (~~((wife, husband))~~) spouse, state
21 registered domestic partner, or such child or children, such action
22 may be maintained for the benefit of the parents(~~((, sisters,))~~) or
23 (~~((brothers, who may be dependent upon the deceased person for~~
24 ~~support, and who are resident within the United States at the time of~~
25 ~~his or her death))~~) siblings of the deceased. However, a defendant's
26 liability is several only and not joint under RCW 4.22.070(1) (a) or
27 (b) if the parent or sibling is not dependent upon the deceased
28 person for support.

29 (3) In every such action the jury may give such damages as, under
30 all circumstances of the case, may to them seem just.

1 **Sec. 3.** RCW 4.20.046 and 2008 c 6 s 409 are each amended to read
2 as follows:

3 (1) All causes of action by a person or persons against another
4 person or persons shall survive to the personal representatives of
5 the former and against the personal representatives of the latter,
6 whether such actions arise on contract or otherwise, and whether or
7 not such actions would have survived at the common law or prior to
8 the date of enactment of this section(~~(+ PROVIDED, HOWEVER, That)~~).

9 (2) The personal representative (~~(shall only be)~~) is entitled to
10 recover on behalf of those beneficiaries identified under RCW
11 4.20.020 damages for pain and suffering, anxiety, emotional distress,
12 or humiliation personal to and suffered by ((a)) the deceased (~~(on~~
13 ~~behalf of those beneficiaries enumerated in RCW 4.20.020, and such)~~).
14 Damages under this section are recoverable regardless of whether or
15 not the death was occasioned by the injury that is the basis for the
16 action.

17 (3) The liability of property of spouses or domestic partners
18 held by them as community property and subject to execution in
19 satisfaction of a claim enforceable against such property so held
20 shall not be affected by the death of either or both spouses or
21 either or both domestic partners; and a cause of action shall remain
22 an asset as though both claiming spouses or both claiming domestic
23 partners continued to live despite the death of either or both
24 claiming spouses or both claiming domestic partners.

25 (~~(+2)~~) (4) Where death or an injury to person or property,
26 resulting from a wrongful act, neglect or default, occurs
27 simultaneously with or after the death of a person who would have
28 been liable therefor if his or her death had not occurred
29 simultaneously with such death or injury or had not intervened
30 between the wrongful act, neglect or default and the resulting death
31 or injury, an action to recover damages for such death or injury may
32 be maintained against the personal representative of such person.

33 **Sec. 4.** RCW 4.20.060 and 2007 c 156 s 30 are each amended to
34 read as follows:

35 (1) No action for a personal injury to any person occasioning
36 death shall abate, nor shall such right of action (~~(determine)~~)
37 terminate, by reason of such death, if such person has a surviving
38 spouse, state registered domestic partner, or child living, including
39 stepchildren, or if leaving no surviving spouse, state registered

1 domestic partner, or ((such)) children, ((if there is dependent upon
2 the deceased for support and resident within the United States at the
3 time of decedent's death,)) the person has surviving parents((
4 sisters,)) or ((brothers; but such action may be prosecuted, or
5 commenced and prosecuted, by the executor or administrator))
6 siblings.

7 (2) An action under this section shall be brought by the personal
8 representative of the deceased, in favor of ((such)) the surviving
9 spouse or state registered domestic partner, or in favor of the
10 surviving spouse or state registered domestic partner and ((such))
11 children, or if no surviving spouse or state registered domestic
12 partner, in favor of ((such)) the child or children, or if no
13 surviving spouse, state registered domestic partner, or ((such)) a
14 child or children, then in favor of the decedent's parents((
15 sisters,)) or ((brothers who may be dependent upon such person for
16 support, and resident in the United States at the time of decedent's
17 death)) siblings.

18 (3) A defendant's liability is several only and not joint under
19 RCW 4.22.070(1) (a) or (b) if the decedent's parent or sibling is not
20 dependent upon the decedent for support.

21 **Sec. 5.** RCW 4.24.010 and 1998 c 237 s 2 are each amended to read
22 as follows:

23 (1)(a) A ((mother or father, or both, who has regularly
24 contributed to the support of his or her minor child, and the mother
25 or father, or both, of a child on whom either, or both, are dependent
26 for support)) parent or legal guardian may maintain or join as a
27 party an action as plaintiff for the injury or death of the child if:

28 (i) The parent or legal guardian has regularly contributed to the
29 support of the minor child;

30 (ii) The parent or legal guardian was dependent on the child for
31 support; or

32 (iii) The parent or legal guardian has had significant
33 involvement in the child's life, including, but not limited to,
34 giving or receiving emotional, psychological, or financial support to
35 or from the child. For purposes of this subsection, "significant
36 involvement" means demonstrated support of an emotional,
37 psychological, or financial nature within the parent-child
38 relationship, at or reasonably near the time of death, or at or
39 reasonably near the time of the incident causing death.

1 (b) If a defendant is liable to a parent or legal guardian
2 entitled to maintain or join an action under (a)(iii) of this
3 subsection (1), the liability of the defendant is several only and
4 not joint under RCW 4.22.070(1) (a) or (b).

5 (2) An action may be maintained under this section, regardless of
6 whether or not the child has attained the age of majority if the
7 child has no spouse, state registered domestic partner, or children.

8 (3) Each parent is entitled to recover for his or her own loss
9 separately from the other parent regardless of marital status, even
10 though this section creates only one cause of action(, but if the
11 parents of the child are not married, are separated, or not married
12 to each other damages may be awarded to each plaintiff separately, as
13 the trier of fact finds just and equitable)).

14 (4) If one parent brings an action under this section and the
15 other parent is not named as a plaintiff, notice of the institution
16 of the suit, together with a copy of the complaint, shall be served
17 upon the other parent: PROVIDED, That notice shall be required only
18 if parentage has been duly established.

19 Such notice shall be in compliance with the statutory
20 requirements for a summons. Such notice shall state that the other
21 parent must join as a party to the suit within twenty days or the
22 right to recover damages under this section shall be barred. Failure
23 of the other parent to timely appear shall bar such parent's action
24 to recover any part of an award made to the party instituting the
25 suit.

26 (5) In such an action, in addition to damages for medical,
27 hospital, medication expenses, and loss of services and support,
28 damages may be recovered for the loss of love and companionship of
29 the child and for injury to or destruction of the parent-child
30 relationship in such amount as, under all the circumstances of the
31 case, may be just.

32 NEW SECTION. Sec. 6. A new section is added to chapter 4.20 RCW
33 to read as follows:

34 There is no double recovery created or allowed for the same
35 damages to a person in actions brought under the provisions of this
36 chapter or RCW 4.24.010.

1 NEW SECTION. **Sec. 7.** This act applies prospectively only and
2 not retroactively. It applies only to claims that are commenced on or
3 after the effective date of this section."

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4 On page 1, line 1 of the title, after "death;" strike the
5 remainder of the title and insert "amending RCW 4.20.010, 4.20.020,
6 4.20.046, 4.20.060, and 4.24.010; adding a new section to chapter
7 4.20 RCW; and creating a new section."

EFFECT: Restores current law related to damages for wrongful death and survival actions; provides that a defendant's liability is several only (not joint) in a wrongful death or special survival action if the parent or sibling is not dependent on the decedent for support; provides that a defendant's liability is several only (not joint) in a wrongful death of a child action if the parent or guardian did not regularly contribute to the support of the minor child or was not dependent on the child for support; prohibits double recovery for the same damages to a person under wrongful death and survival actions; removes the retroactive application of the bill's provisions.

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