
SENATE BILL 5506

State of Washington

52nd Legislature

1991 Regular Session

By Senator Gaspard.

Read first time February 4, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to survival of actions; and amending RCW 4.20.020,
2 4.20.060, 4.20.046, 43.20B.415, 43.20B.445, and 4.24.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 4.20.020 and 1985 c 139 s 1 are each amended to read
5 as follows:

6 Every such action shall be for the benefit of the wife, husband,
7 child or children, including stepchildren, of the person whose death
8 shall have been so caused. If there be no wife or husband or such
9 child or children, such action may be maintained for the benefit of the
10 parents, sisters or brothers, (~~who may be dependent upon the deceased~~
11 ~~person for support, and~~) who are resident within the United States at
12 the time of his or her death.

13 In every such action the jury may give such damages as, under all
14 circumstances of the case, may to them seem just.

1 **Sec. 2.** RCW 4.20.060 and 1985 c 139 s 2 are each amended to read
2 as follows:

3 No action for a personal injury to any person occasioning death
4 shall abate, nor shall such right of action determine, by reason of
5 such death, if such person has a surviving spouse or child living,
6 including stepchildren, or leaving no surviving spouse or such
7 children, if there is ~~((dependent upon the deceased for support and))~~
8 resident within the United States at the time of decedent's death,
9 parents, sisters or brothers; but such action may be prosecuted, or
10 commenced and prosecuted, by the executor or administrator of the
11 deceased, in favor of such surviving spouse, or in favor of the
12 surviving spouse and such children, or if no surviving spouse, in favor
13 of such child or children, or if no surviving spouse or such child or
14 children, then in favor of the decedent's parents, sisters or brothers
15 who may be dependent upon such person for support, and resident in the
16 United States at the time of decedent's death.

17 **Sec. 3.** RCW 4.20.046 and 1961 c 137 s 1 are each amended to read
18 as follows:

19 (1) All causes of action by a person or persons against another
20 person or persons shall survive to the personal representatives of the
21 former and against the personal representatives of the latter, whether
22 such actions arise on contract or otherwise, and whether or not such
23 actions would have survived at the common law or prior to the date of
24 enactment of this section: PROVIDED, HOWEVER, That no personal
25 representative shall be entitled to recover damages for pain and
26 suffering, anxiety, emotional distress, or humiliation personal to and
27 suffered by a deceased. However, in any action brought under this
28 section to recover damages for a death caused by the wrongful act,
29 neglect, or default of another, the personal representative shall be

1 entitled to recover damages for loss of the person's life or life's
2 enjoyment, or both. The liability of property of a husband and wife
3 held by them as community property to execution in satisfaction of a
4 claim enforceable against such property so held shall not be affected
5 by the death of either or both spouses; and a cause of action shall
6 remain an asset as though both claiming spouses continued to live
7 despite the death of either or both claiming spouses.

8 (2) Where death or an injury to person or property, resulting from
9 a wrongful act, neglect or default, occurs simultaneously with or after
10 the death of a person who would have been liable therefor if his or her
11 death had not occurred simultaneously with such death or injury or had
12 not intervened between the wrongful act, neglect or default and the
13 resulting death or injury, an action to recover damages for such death
14 or injury may be maintained against the personal representative of such
15 person.

16 **Sec. 4.** RCW 43.20B.415 and 1971 ex.s. c 118 s 2 are each amended
17 to read as follows:

18 The estates of all mentally or physically deficient persons who
19 have been admitted to the state residential (~~(schools listed in RCW~~
20 ~~72.33.030)) habilitation centers either by application of their parents
21 or guardian or by commitment of court, or who may hereafter be admitted
22 or committed to such institutions, shall be liable for their per capita
23 costs of care, support and treatment: PROVIDED, That (~~(the estate~~
24 ~~funds may not be reduced as a result of such liability below an amount~~
25 ~~as set forth in RCW 72.33.180)) estate funds attributable to recovery
26 on any claim against the state of Washington, the state residential
27 habilitation centers, or their employees or agents, whether by way of
28 judgment, settlement, or otherwise, may not be reduced as a result of
29 the liability imposed by RCW 43.20B.410 through 43.20B.455.~~~~

1 **Sec. 5.** RCW 43.20B.445 and 1988 c 176 s 907 are each amended to
2 read as follows:

3 The provisions of RCW 43.20B.410 through 43.20B.455 shall not be
4 construed to prohibit or prevent the department of social and health
5 services from obtaining reimbursement from any person liable under RCW
6 43.20B.410 through 43.20B.455 for payment of the full amount of the
7 accrued per capita cost from any property acquired by gift, devise or
8 bequest subsequent to and regardless of the initial findings of
9 responsibility under RCW 43.20B.430: PROVIDED, That the estate of any
10 resident of a residential habilitation center shall not be liable for
11 such reimbursement subsequent to termination of services for that
12 resident at the residential habilitation center: PROVIDED FURTHER,
13 That, subject to the proviso of RCW 43.20B.415, upon the death of any
14 person while a resident in a residential habilitation center, the
15 person's estate shall become liable to the same extent as the
16 resident's liability on the date of death.

17 **Sec. 6.** RCW 4.24.010 and 1973 1st ex.s. c 154 s 4 are each amended
18 to read as follows:

19 The mother or father or both may maintain an action as plaintiff
20 for the injury or death of a ((minor)) child(~~(, or a child on whom~~
21 ~~either, or both, are dependent for support))): PROVIDED, That in the~~
22 case of an illegitimate child the father cannot maintain or join as a
23 party an action unless paternity has been duly established and the
24 father has regularly contributed to the child's support.

25 This section creates only one cause of action, but if the parents
26 of the child are not married, are separated, or not married to each
27 other damages may be awarded to each plaintiff separately, as the court
28 finds just and equitable.

1 If one parent brings an action under this section and the other
2 parent is not named as a plaintiff, notice of the institution of the
3 suit, together with a copy of the complaint, shall be served upon the
4 other parent: PROVIDED, That when the mother of an illegitimate child
5 initiates an action, notice shall be required only if paternity has
6 been duly established and the father has regularly contributed to the
7 child's support.

8 Such notice shall be in compliance with the statutory requirements
9 for a summons. Such notice shall state that the other parent must join
10 as a party to the suit within twenty days or the right to recover
11 damages under this section shall be barred. Failure of the other
12 parent to timely appear shall bar such parent's action to recover any
13 part of an award made to the party instituting the suit.

14 In such an action, in addition to damages for medical, hospital,
15 medication expenses, and loss of services and support, damages may be
16 recovered for the loss of love and companionship of the child and for
17 injury to or destruction of the parent-child relationship in such
18 amount as, under all the circumstances of the case, may be just.