
Judiciary Committee

HB 2262

Title: An act relating to actions for wrongful injury or death.

Brief Description: Concerning actions for wrongful injury or death.

Sponsors: Representatives Santos, Goodman, Johnson, McBride, Sawyer, Fitzgibbon, Dolan, Orwall, Macri, Frame, Jinkins, Ormsby and Pellicciotti.

Brief Summary of Bill

- Makes a number of changes to statutes governing wrongful death and survival causes of action, including changes to the beneficiaries entitled to recoveries and the damages that may be recovered under these actions.

Hearing Date: 1/11/18

Staff: Edie Adams (786-7180).

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.

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.

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 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 is designated as remedial and applies retroactively to all claims that are not time barred, as well as any claims pending in any court on the effective date of the act.

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 his or her 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: Language governing recoverable damages is reorganized, and 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, loss of life itself, loss of enjoyment of life, shortened life expectancy, or humiliation.

Appropriation: None.

Fiscal Note: Requested on 1/4/18.

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